



EGUZKILORE

(Flor protectora contra las fuerzas negativas)

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LOCAL CONSEQUENCES OF INTERNATIONAL DRUG CONTROL

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Resumen: Se analiza la relación entre la legislación india sobre drogas y los diversos usos culturales e históricos que se dan en esta sociedad. Frente a una aceptación social de los usos culturales se impone una criminalización estricta de la posesión de cannabis u opio –más de 10 años de encarcelamiento por posesión de cannabis–. Esta legislación simbólica y de difícil aplicación –algunas castas indias usan cannabis por motivos religiosos– relaciona el consumo de drogas con el comportamiento desviado. Se afirma la necesidad de una aproximación alternativa a la cuestión de las drogas como la reducción de daños.

Palabras Clave: Drogas, criminalización de las drogas, usos culturales de las drogas, legislación sobre drogas, reducción de daños.

Laburpena: Indiako drogen gaineko legeria eta gizarte horretan dauden erabilera kultural eta historikoen arteko erlazioak aztertzen dira. Erabilera kulturalaren gizarte onarpenaren kontra, kannabisa edo opioaren kriminalizazio zorrotza inposatu dute –10 urte baino gehiagoko gartzelaratzea kannabisa edukitzeagatik–. Aplikatzeko zaila den legeria sinboliko honek –Indiako zenbait kasteek kannabisaren erabilera erlijiosoan egiten dute– drogen kontsumoa portaera maltzurerekin lotzen du. Drogen gaiaren gaineko hurbilketa alternatibo bat proposatzen da, hala nola, kalteen murrizketa.

Gako Hitzak: Drogak, drogen kriminalizazioa, drogen erabilera kulturalak, drogen gaineko legeria, kalteen murrizketa.

Summary: This contribution focuses on the relationship between Indian legislation on drugs and the diverse cultural and historical uses of drugs. Instead of a social acceptance of the cultural uses a strict criminalisation of the possession of cannabis or opium has been imposed: more than 10 years of imprisonment in case of possession of cannabis. This symbolic legislation is difficult to apply –some Indian casts use cannabis by religious reasons–, and assimilates the drug use to the deviant behaviour. The necessity of an alternative approach to the drugs issue, in the way of the harm reduction policy, is affirmed.

Key words: Drugs, criminalization of drugs, cultural uses of drugs, drug legislation, harm reduction.

Résumé: On analyse le rapport entre la législation indienne sur les drogues et les diverses utilisations culturelles et historiques de cette société. Face à une acceptation sociale des utilisations culturelles on impose une criminalisation stricte de la possession du cannabis ou opium –plus de dix années d'emprisonnement par possession de cannabis–. Cette législation symbolique et d'application difficile –quelques castes indiennes utilisent le cannabis pour des motifs religieux– met en rapport l'usage de drogues avec le comportement déviant. On affirme la nécessité d'une approche alternative aux drogues comme celle de la réduction des dommages.

Mots clef: Drogues, criminalisation des drogues, utilisations culturelles des drogues, législation sur les drogues, réduction des dommages.

CONTEXT

Cultural use of mind altering substances has been part of Indian reality. The easy availability of traditional drugs and social sanction for consumption did not lead to excessive use for through the years for there evolved mechanisms of use management. With the passing of Narcotic Drugs and Psychotropic Substances Act, 1985, traditional use was criminalized and mechanisms of control that existed were not any longer legal. Almost two decades after criminalization of drug use, control of drug consumption has become complex and rather than restricting drug use there has been expansion of drug use and drug trade in most parts of the country. This paper focuses on the cultural use that existed and the impact of criminalization on Indian drug situation.

I) CULTURAL USE IN INDIA

India is a mosaic of different cultures with eighteen official language and 1600 mother tongues. This complex cultural reality has provided space for use of mind altering substances under social, religious and medicinal context. Hinduism, a major religion in India has provided settings for use of mind altering substances. Cannabis is considered to be gift from Lord Shiva to his disciples. During the festivals of Shivaratri (Celebration of Lord Shiva's Marriage) and Holi (festival of clours); his disciples and followers consume cannabis in various forms to show reverence to their Lord and his gift to mankind. On Shivaratri cannabis drink called bhang is distributed by the priest to people who come for *darshan* (worship). The quantity distributed is small and inadequate for altering consciousness. It is not uncommon for a infant to be given a small drop on visit to the temple. Outside the Shiva temple on this day bhang is distributed to the public and also snacks and sweets made of cannabis leaves.

Among the disciples of Lord Shiva the religious group of Saivite *sadhus*, who follow the life style of Lord Shiva by being ascetics, consumption of different forms of cannabis is as common as drinking tea or coffee in western world. At the same time cannabis is consumed by these *sadhus* for spiritual enlightenment and there are regulations with regard to initiation, daily consumption, graduation and mastery over MAS in this religious community. The focus after consuming the substance is to retain control and utilise altered state for meditation and improving yogic skills. The role of drug and its perception is in stark contrast from the existing literature on drug addiction, as it has evolved from western literature.

The most evident religious link is the worship of Parappaswamy, the holy man who used cannabis for enlightenment. In his idol he is portrayed as smoking a chillum (Machado, 1994) and it clearly illustrates that culture did not consider cannabis user to be a deviant or criminal or a physically and psychologically dependent personality in need of medical help.

With regard to opium its cultural use has been linked to Rajputs in Rajasthan and Gujarat. Here opium was consumed in group setting and the person who hosted the gathering (*dayro*) and distributed opium was held in high esteem. Among Rajputs any important social event was incomplete without distribution of opium drink; a guest was greeted with opium, a business deal or marriage was sealed with opium distribution and during funeral it was given as a relaxant to people who came (Charles, et al, 1994). It is not only opium that had a say in finalization of marriage, in a district in

Karnataka (Southern India) marriage would not be solemnized unless cannabis has been distributed, otherwise it is considered to be an insult (Joga Rao, 1994).

In addition to religious and social reasons, cannabis and opium has been part of Indian Traditional systems of medicines and home remedies (NARC and ISRD, 2000). Majority of the Indian population (more than 70%) live in rural areas and in these areas it is traditional systems of medicine and folk remedies that people depend on.

Opium has been used by both men and camel to deal with extreme heat of the desert (Masihi, et al, 1994). In case of cannabis its fibre has been used for preparing fabric, jackets, bags, shoes, nets and rope. This environment friendly practice is fast disappearing and is being replaced by plastic. The only cannabis jacket that could be found in the area was one in a designer shop, which was made in Germany, with the raw material taken from developing country (Charles, 2001).

Opium is also used in food preparation in Himachal Pradesh, for seeds of the plant (the portion remaining after removing the gum) is added to cakes or chappathi for flavour and eaten with 'chhas' (Curd). In the same area during harvest season favourite dish prepared consists of parched Indian bread made of corn or wheat and mixed with hemp seeds.

Various forms of sanctioned use that evolved through the years also put in place a mechanism for use management. For it specified settings for use, created regulation of profile of users, controlled the quantity consumed through mode of consumption, pattern of use, rituals surrounding use and through music, distribution of food and encouraging social interaction put drug consumption as a part of many other activities that surround the event. The focus was on the control of the mind over the substance, unlike the western or American approach to emphasise the powerlessness of the user over the substance (Charles, 2004).

II) IMPACT OF CRIMINALISATION OF DRUG SITUATION

Narcotics Drugs and Psychotropic Substances Act, 1985, was enforced at the National level but the implementation of the legislation was not uniform. It would have been difficult for the central government to actually implement the legislation which states possession of any amount of cannabis was criminal, for till 2002, for possessing 5 gms of charas (hashish) one could be imprisoned for ten years or more. Subsequently amendment to NDPS Act has made differentiation between small quantities and large quantities, for hashish it is 100 gms and 1 Kg. The basic confusion still continues as there is no legal source for cannabis and use is criminal.

At the same time the legislation is made invalid because of cultural use and per day consumption of hashish by *sadhus*. Since use is criminal as per law they have to be imprisoned for more than six months, at the same time no political party or group can dream of implementing the law, it is this that has restricted the spread of synthetic drugs in rural areas, though situation is changing.

Recent studies undertaken (Charles, 2003) shows that unlike earlier context of cultural use of cannabis in Himachal Pradesh there is evolving non-cultural use of cannabis, but has not led to any major social concern. At the same time there is a increasing use of synthetic drugs in specific context, such as moon light parties.

In other areas where there is being seen a shift to synthetic drugs are Punjab and Rajasthan. In Punjab use of poppy straw and raw opium has existed for decades and it did not create any major concern. While poppy straw is used to prepare a drink like tea, others just chew raw opium. Recent data show that there is a shift to using synthetic opiate and the seizure of poppy straw is increasing in the State. This has increased the price and easy accessibility to poppy straw at the same time its substitute synthetic opiates from pharmacies and black market are far more available and cheaper. In addition to this synthetic products have always the sanctification of being a medical drug and thereby being easy for the sellers to market. There are indication that the profit margin from sales of certain companies far out beats the probable sale for medical reasons, such as cardiac and other health concerns in the given State or area.

In the case of Rajasthan where opium has cultural sanction and those who visited treatment centres, if at all, for drug problem were males in their late fifties or sixties. At the same time with shift towards criminalization and emerging market for new drugs, it is youth who seek treatment for abuse of heroin or its crude form. Even some of the long term opium users are shifting to heroin because of easier availability of the later.

The trend to shift towards synthetic and derivative drugs are problematic as these drugs have no cultural base, the threat is of spread of injecting behaviour (though at present it is limited to small pockets in metropolitan cities and areas in States of North Eastern part of the country).

Synthetic drugs would be far more difficult to control as it can be obtained from legal source and India does not have measures in place to ensure strict regulation against diversion. Synthetic and derivative drugs can have strong adulterants, or their preparation in illegal market can use addictives that are dangerous, this is not the case with regard to cannabis product.

Unlike in rural areas or other states, in Mumbai city the move towards implementing legislation was seen from the beginning. It was the process of criminalisation and political changes that led to strict action against drug sale and as a result opium and cannabis lost out in the competition with derivative and synthetic drugs. The profile of sellers also changed, for now they had to deal with police harassment and it was even difficult to provide space for cannabis and opium users to sit and smoke as it was the cultural pattern to do so. This led to new entrants into the drug trade they came from poor background and were willing to indulge in crime for quick buck. They did not want to sell cannabis/opium as it meant less profit and the bribe to be paid to police was the same.

Certain cannabis sellers initially sold brown sugar free of charge to create a market. As it was the pattern to sit and share a chillum of cannabis and thereby initiating brown sugar use was easy, for it was a while powder that was sprinkled over cannabis chillum.

Initially in Bombay city there were many out lets for drug trade but this gradually changed and became organised. The areas that came to be main spots are not permanent, they shift according to police action, which depends on local political commitment or support for selective action.

III) STRENGTHENING THE PROCESS OF CREATING DEVIANCE

Deviance as defined by Curra, 2000, pg. 16; “Is a social construction that emerged from social differentiation, social conflict and social disagreement”. Criminalisation of drug use, ensured drug user is considered a deviant in any context. In addition to this institutional programmes aimed at prevention and treatment also focused on emphasising the difference between user and non-users without providing scope for cultural use management. This two pronged approach by the government was to create a new body of knowledge that strengthened deviation.

The institutional measures, legal and treatment, have inherent limitation:

- They are contradictory to local reality and thereby created scope for two forms of control existing side by side.
- The government does not have the resources nor would it be viable to implement the legislation as it was till 2002. For to arrest all cannabis users would mean building prisons as large as states. At the same time, even with the present rate of arrest the Judiciary is over burdened and the suspected persons spends at least three or more years in prison before his case is disposed off. Earlier there were cases of users spending as much as 9 to 10 years in prison for possession of small quantity of brown sugar, which till 2002, was a quarter gram (Anuradha, 2000, Charles, et al, 2002).
- The care management institutions focus on western approach to managing the problem. Given the scarcity of funds, the government funded treatment centres are inadequately staffed in terms of doctors and other professionals. To make the proposition economically viable the focus is to shift most of the burden on to ex-users or rehabilitated patients and cheap work force.
- Funding available from non-governmental agencies also focus on western approaches (basically criminal perspective) to drug abuse management.
- There is no attempt made to make care relevant to socio-cultural reality of the area. This at times can be counter productive for example, a brown sugar user who learnt from another opium user to detoxify himself by using *doda pani* (opium water) was able to be functional by daily consumption of *doda pani* instead of brown sugar. When his wife found out about his use of opium, months later, she forced him to seek treatment and at the treatment centre the doctor told him, that opium was far more addictive than brown sugar. After treatment he was clean for some months and than relapsed to brown sugar use, as he no longer felt opium was an option. Besides it is easier to hide brown sugar use than opium use and this is not an individual case (Charles, 2004).
- Corruption within the system has ensured that peddler either send their assistants for serving the sentence or in case they are arrested they are set free as the cases get disposed off. Besides those who are addicted and have the resources can get the substance of choice even inside the jail (Charles, 2004).

IV) CREATING MARKET FOR DRUGS

With drug trade becoming a lucrative option there are illicit processing units being set up close to cultivating areas. Often there is a discrepancy in the area said to be

under cultivation of opium and area from where opium harvest occurs. The discrepancy is often said to arise from destruction of crop, these are often false claims and the opium harvested is sold to the black market and diverted for processing heroin. In addition to this there is a discrepancy between stated yield sold to the government and actual yield. Among the various reasons that offer scope for such diversion is that the existing caste/clan affiliation, feudal system and poverty among small land holders or the landless who cultivate on others land, this offers scope for large scale organised cultivators to hire poor farmers who can bear the brunt in case of any arrest. Given the present trend towards globalisation and opening of economy the condition of the poor may deteriorate as the option poor have to 'succeed' would be too few. It is against this background that through media a consumerist life style emphasising a particular pattern of living is being portrayed as symbol of success. When faced with poverty and declining opportunities for change indulgence in mind altering substances will be a realistic option for many to deal with loss of self esteem. The present trend of events will ensure the choice is more towards hard drugs. As the profit margin is more in hard drugs the accessibility to these drugs will increase.

This shift along with tourism and improved technology (internet) will increase knowledge base of different kinds of hard drugs. The focus of this form of consumption is on altering consciousness for pleasure in itself and enhancing sexual pleasures. There will be only two forms of body of knowledge available to the users, one from other users on how to deal with marginalisation arising from deviance and how to hide the habit from being identified. From the intervention programmes the focus would be to strengthen the concept of deviance by highlighting the difference between users and non-users and need to abstain from all forms of drugs in order to facilitate social reintegration or integration. This process will ensure that many users seek treatment after ten years or more of use and thereby making socialisation into a different milieu difficult and expanding scope for marketing drugs.

V) CRIMINALISATION OF SOCIAL FABRIC

Organised crime groups that evolved in Bombay were undertaking smuggling of electronic goods, consumer goods and gold as lucrative options. With liberalisation these options other than gold have become non-viable and it is natural that they opted to include drugs in their range of activities (Charles, et al, 2002). Dubai has been important for Indian organised crime groups, though they have branched to other countries like Thailand, Hong Kong, Nepal, Bangladesh and Mauritius.

With criminalisation there emerged process of layering and it created different kinds of workers in drug trade. As the emphasis of NDPS Act is on possession of drug and unlike other crimes the arrested person is considered guilty and proving of his/her innocence depends on the person and not the prosecutor. In Bombay the different kinds of workers that emerged are watchdogs, testers, drug sale assistants and body guards. Presence of different kinds of worker also offers the peddler the option of placing the blame on another in case of sudden raid.

In a Himachal Pradesh district of Una, the drug trade is done in a different manner, the peddlers assistants asks the client to come to a specified place with money and then at the appointed time the assistant collects the money and tells the client to collect the drug from under a stone or some other place where drug has already been hidden.

VI) EXPANDING SCOPE FOR DRUG TRADE

With globalisation and inappropriate development programmes there is an increase in number of individuals who are willing to take risks and get involved in drug trade and other organised crime activities. The dream of a lucrative venture and prosperous lifestyle had initiated individuals from nearby states of Bihar and Uttar Pradesh to seek organised crime assignments in Bombay. The changing profile of couriers from those involved in drug trade to hiring individuals who neither have an idea about the contraband they carry or the legal risks involved, further complicate the situation.

VII) NEED FOR ALTERNATE APPROACH

The funding policy and governments inability to assert the need for a different drug policy has limited the options available to look at alternate approach needed. At the same time there are certain aspects within the Indian context that need to be focussed upon for a realistic and relevant drug control programme:

- Existing cultural or social non-formal norms of control need to be strengthened. Legal measures in itself is inadequate to deal with as social issue that has been classified as deviant or criminal.
- Implementation of legislation at present is only creating a platform for selective implementation of justice (Charles, et al, 2002) and in case there is privatisation of correctional institutions it may lead to further abuse of the marginalised as seen in case of United States. To cite from Laniel, 2001, 'Nowadays, the unemployed white of the rural areas, who were ruined by the agricultural crisis of the 1980s and whose land has been bought by large agribusiness corporation, are paid to guard the unemployed blacks of the urban areas with money of the social programmes that, precisely were meant for blacks'. This method of dealing with drug abuse is only creates a permanent state of marginalisation and ensuring the problem expands in scope. Within the Indian context it would be caste that plays a major role in the process.
- Harm minimisation programmes have till now focussed on safe injecting practice. At the same time within the Indian context it is the cultural acceptance of cannabis and opium as against brown sugar which is considered a foreign drug that prevented drastic shift to derivative and synthetic products in spite of criminalisation.
- There exist non institutional programmes that culture has provided to deal with excessive opium use and this had been used by brown sugar users to deal with their excessive use. Yet there has been no effort to document or spread this option as an alternative measure.
- Harm minimisation begins with differentiation between various types of drugs. For experience has proved that American approach to punitive intervention has been far from successful.
- Threat of shift to pharmaceutical and other synthetic products has not been addressed. Brown sugar users in Mumbai are using Nitrazepam as it is cheaper and also to compensate for the poor quality of brown sugar.

- It is time to accept that drug use has existed for a very long time and it never attained the dimension as it does today.
- It is time to shift from eradication of drug use to coexistence with drug concerns. For in the end drug is but a substance that attains the dimension and power that we decide to bestow on it.

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