

SUPREME COURT OF INDIA

Bachpan Bachao Andolan

Vs.

Union of India & Ors.

WP.(Civil)No.906 of 2014

(T.S.Thakur,CJI., A.M. Khanwilkar And Dr D.Y.Chandrachud,JJ.,)

14.12.2016

JUDGMENT

Dr D.Y.Chandrachud,J.,

1. These proceedings which have been instituted under Article 32 of the Constitution by Bachpan Bachao Andolan bring focus upon the alarming increase in the use of drugs and alcohol among children in India. The petition has been instituted in the public interest for enforcing the fundamental rights of children particularly those suffering from and involved in substance use and abuse. The petitioner seeks the intervention of this Court for a mandamus to the Union of India to formulate and implement a national action plan for children on the issue of drugs, alcohol and substance abuse amongst children. This must, according to the petitioner, include in its coverage issues pertaining to identification, investigation, recovery, counselling and rehabilitation. This essentially is the main relief which has been sought. Other incidental directions include steps to incorporate appropriate content in the school curriculum; creation of a coordinating body; imposing mandatory duties for reporting drugs and substance abuse on school principals and on the police; establishment of de-addiction centres in every district and at the tehsil level; protecting children reporting drug use from harm; preparation of a national database and a direction for the registration of cases against persons supplying tobacco, alcohol and drugs to children. Supplemental reliefs are claimed in these proceedings.

2. India is home to the largest child population in the world with over forty-four crore children, according to the census of 2011. Among this, twenty-four crore children constituting twenty-four percent of the population of the country are adolescent. They constitute a vulnerable age group for social, educational, moral and physical development. Protecting children from wide-spread prevalence of substance abuse is one of the biggest policy challenges facing India. Recent reports both of official and private agencies indicate that there has been a substantial increase in the prevalence of use and abuse of substances in young children. A nationwide survey was carried out on the basis of a representative household sample across the country as the National Family Health Survey, 2005-06. The petitioner has relied upon several reports which indicate the nature and extent of substance

abuse in children. Many of them make recommendations for the formulation and implementation of policy.

3. In this part of the judgment, we will broadly summarize the content of the reports mentioned above:

“(i) Report of Planning Commission’s Working Group on Adolescent and Youth Development, for formulation of 12th Five Year Plan (2012-17):

“Substance abuse among young people is on the increase. That could be due to peer pressure or stress and frustration. Children are not fully aware of the full implications of abuse to their health and to their life. Drug mafia and cartels target young people in cities and towns and once they are addicted, it is an easy market for them.”

(ii) Research Study by National Commission on Protection of Child Rights (August 2013) :

The final study sample comprised of 4024 children between 5-18 years of age. The study indicates that:

“...Of the boys aged 15-19 years (n=13,009), 28.6% reported tobacco use and 11% reported alcohol use. Similarly, in the girls aged 15-19 years (n=24,811), 3.5% reported tobacco use and 1% reported alcohol use. It appears to be an upward trend from the previous round of the survey (NFHS-2; 1998-99) where the prevalence of alcohol use was found to be 2.4% for boys and 0.6% for girls [13]. Further, it appears that among those who ‘drink’, a significant percentage of boys and girls are using alcohol at least weekly (18.3-39.8%) or even daily (3.4-6.8%) majority reported a lifetime use of variety of substance. Tobacco at 83.2% and alcohol (68% were the most common substance followed by cannabis (35.4%), inhalants (34.7%), pharmaceutical opioids (18.1%), sedatives (7.9%) and heroin/smack (7.9%). A significant proportion (12.6%) reported use of injectable substances.”

The study showed several glaring issues pertaining to the pattern of substance abuse amongst children:

Tobacco and inhalants were used almost on a daily basis, several other substances were being used on less than daily or intermittent basis in the past month The study showed that the mean age of onset was lowest for tobacco (12.3 years) followed by onset of inhalants (12.4 years), cannabis (13.4 years), alcohol (13.6 years), proceeding then to use of harder substances- opium, heroin (14.3-14.9 years) and then finally use of substances through injecting route (15.1 years). The study highlighted the regional issues and preferences. Choice of substance showed some regional variations. The study also highlighted various other issues pertaining to rehabilitation and reintegration of children in the mainstream of society.

Recommendations :

- “1) The study has highlighted the pressing need for initiating programmes for prevention and treatment. There is a need to sensitize the state governments and all the important stakeholders about the problem of substance use among children in the country;
- 2) Prevention programmes must target multiple settings and multiple risk factors particularly vulnerable children such as children of substance users, children injecting substances, street children, children involved in child labour, trafficked children, children of sex workers and any other category most at risk;
- 3) Prevention in schools should include universal prevention programmes such as education and life skill programmes. School going children who are at risk should have access to professional counselling in the school setting;
- 4) There is need for availability of specialized treatment services for children who are using substances. These services should be available in government hospitals; NGOs funded by Ministry of Social Justice and Empowerment (MSJE) and also by NGOs that provide services to street children. Detoxification should be available at government run de-addiction centres with rehabilitation in NGO/Community setting with linkage with NGOs;
- 5) Rehabilitation efforts focussing on skill building and vocational training should be provided by NGOs;
- 6) Juvenile homes and Children homes should have service provision for substance using children through linkage with treatment service;
- 7) There is need for provision of service by the TI NGOs to children who are injecting substances. Action to be taken by NACO/SACS;
- 8) Prevention efforts must target both demand and supply reduction efforts. Supply reduction efforts should limit availability of tobacco and alcohol near residential areas and schools;
- 9) Size estimation of substance using children should be carried out in specific high risk areas, metropolitan cities and conflict areas; and
- 10) School based surveys should be conducted at a national level based on a representative sample.

Relevant part pg. 20, full report at pg. 157

(iii)Annual Report of the Ministry of Social Justice and Empowerment (2013-2014)1:

The report defines “a victim of substance abuse” as a person who is addicted to/dependent on alcohol, narcotic drugs, psychotropic substances or any other addictive substances (other than tobacco).

The report states:

- Alcoholism and substance abuse is assuming an alarming magnitude. 12th plan envisages an urgent need for effective counter measures through programmes in convergence mode

- Various Central Ministries need better coordination and convergence.

- All existing schematic and non-schematic interventions made by the ministries need to be integrated under a Mission Mode programme.

- Preventive measures need to be taken to reduce both supply and demand and universal access to preventive treatment and rehabilitation of alcoholism and drug abuse.

- Integrated Rehabilitation Centres of Addicts (IRCAs) assisted under the scheme of assistance for the prevention of alcoholism and substance (drugs) abuse and for social defence services run by voluntary organizations need to be strengthened .

- Broad strategy :

- (i) The overall strategy is awareness generation, identification, counselling, treatment and rehabilitation of drug dependent persons through collaborative efforts of the Central and State Governments, Voluntary organizations and other national and international bodies. With a view to reducing the demand for and consumption of addictive substances, the thrust would be on preventive education programmes, comprehensive recovery of addicted persons and their reintegration into society.

- (u) In order to achieve the objectives of the Policy, the key strategies will be as follows :

- > To evolve appropriate models for the prevention of alcoholism and substance abuse, treatment and rehabilitation of drug dependent individuals;

- > To promote collective initiatives and self-help endeavour among individuals and groups vulnerable to dependence or found at risk;

- > To increase community participation and public cooperation in the reduction of demand for dependence-producing substances;

- > To create a pool of trained human resources personnel and service providers to strengthen the service delivery mechanisms;
- > To establish and foster appropriate synergy between interventions by the State, corporate initiatives, the voluntary sector and other stakeholders in the field of substance abuse prevention;
- > To facilitate networking among policy planners, service providers and other stakeholders with an aim to encourage appropriate advocacy;
- > To promote and sustain a system of continuous monitoring and evaluation including self-correctional mechanism.

> (rn) It is the aim of the draft National Policy to strive for a society where use of intoxicating drugs is discouraged through awareness generation and prevention, directed towards the young and adolescents-helping individuals make appropriate choices and stay away from drugs. Persons dependent on substance abuse will be encouraged to give up drugs through a continuum of care and treatment services. Reducing the demand for addictive substances with the active support of all stakeholders, including governmental and civil society organizations, is the goal.

(iv) While recognizing the need for services, it is also necessary to increase the range of services and the access to various modalities of interventions for prevention, treatment, rehabilitation with a focus on the poor and marginalized sections of the society. Special attention would be provided to groups at high risk.

(v) School children are highly impressionable and are influenced largely by the peer group behaviour. Appropriate interventions in the form of curricular/co-curricular contents will be put in place in the schools and colleges for awareness generation. Interventions will be evidence based and supported by sustainable strategies.

(vi) Street children/adolescents have always been vulnerable to abuse of certain drugs like pharmaceuticals, solvents, inhalants, etc. They do not have access to health care and there is a total lack of preventive initiatives for these children as they are cut off from school systems and community programmes, which are the general vehicles for such interventions. Curbing the sale and abuse of pharmaceutical and other such substances, including solvents, glue etc, will be an important element of the policy. Rights of the children are to be respected and protected. The National Commission for Protection of Child Rights (NCPCR) visualises a rights-based perspective flowing into National Policies and Programmes, along with nuanced responses at the State, District and Block levels, taking care of specificities and strengths of each region.

(vii) Facilities exclusively for such adolescents should be provided. The essential requirements for them include psycho-social support, life skill training, nutrition and health facilities, educational and formal training, recreational facilities including

sports and referral services. Protective measures will be met through night shelters/drop-in centres and easy access to health services including counselling and de-addiction facilities. Police and judiciary should be sensitized about these issues.

(viii) Women and young girls are affected by drug and alcohol abuse in various ways. They suffer the economic, social and physical consequences as partners of male drug users. Some of them may themselves become addicted, increasing their vulnerability for this population sub-groups.

(ix) Recognizing the close nexus between substance abuse and HIV/AIDS and the fact that drug injecting person is vulnerable to HIV/AIDS, the National Policy envisages that the population at risk will be sensitized to the threat of and wherever necessary, treated for screening and identification for HIV/AIDS. Drug demand reduction and HIV/AIDS prevention programmes will be synergized to address the spread of HIV/AIDS amongst substance abusers.

(X) There will be three different levels of the substance abuse intervention strategy as follows :

Primary prevention encouraging abstinence by generating awareness; Secondary prevention to facilitate the process of behaviour change of high-risk individuals, early identification, treatment and counselling of affected individuals; Tertiary prevention by providing rehabilitation and reintegration of recovering persons into the social mainstream. Broad Strategy :

- Preventive education & awareness building by multiple agencies
- Comprehensive package for recovery of affected individuals
- Increase range of services
- Develop multiple modalities of interventions

(iv)National Policy on Narcotic Drugs and Psychotropic Substances (NDPS) drafted by the Ministry of Finance, Depament of Revenue :

The Policy has attempted to curb the menace of drug abuse and contains provisions for treatment, rehabilitation and social reintegration of victims of drug abuse :

- In Para 55 of the policy, special emphasis is made to stop the menace of drug abuse amongst children e.g.- local police should pay special attention to areas surrounding schools and colleges; schools and colleges to conduct surveys to assess the level of addiction; educational authorities to include a mandatory and comprehensive chapter on drug abuse and illicit trafficking and its social-economic cost.

The policy, in its Annexure includes a time bound and specific Plan of Action. The policy has prepared a 'Plan of Action' with regard to the following recommendations: National Drug Control System, National Survey on Drug Abuse, Demand Reduction Activities, Supply Reduction Activities, Control of licit cultivation of opium poppy and production of opium, etc.

4. We find that there have been numerous statements of policy, by different arms of the government. What is needed is a comprehensive formulation of a National Plan which will form the basis of co-ordinated intervention by the Union and State governments together with their agencies in collaboration with expert institutions at the national and international levels having a bearing on the issue.

5. United Nations Conventions

“A. India is a signatory to three United Nations Conventions, having a bearing on the issue:

1. Convention on Narcotic Drugs, 1961;

2. Convention on Psychotropic Substances, 1971;

3. Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. India has an international obligation to curb drug abuse. The United Nations General Assembly, in its 20th Special Session in 1998, has accepted demand reduction as an indispensable pillar of drug control strategies. The demand reduction strategy Consists of education, treatment, rehabilitation and social integration of drug dependent persons for prevention of drug abuse.

B. Article 38 of the Single Convention on Narcotic Drugs of 1961, suggests the following measures against the abuse of drugs :

1. “The Parties shall give special attention to and take all practicable measures for the prevention of abuse of drugs and for the early identification, treatment, education, after-care, rehabilitation and social reintegration of the persons involved and shall co-ordinate their efforts to these ends.

2. The Parties shall as far as possible promote the training of personnel in the treatment, after-care, rehabilitation and social reintegration of abusers of drugs.

3. The Parties shall take all practicable measures to assist persons whose work so requires to gain an understanding of the problems of abuse of drugs and of its prevention, and shall also promote such understanding among the general public if there is a risk that abuse of drugs will become widespread.”

C. Article 12 of SAARC Convention on Narcotic Drugs and Psychotropic Substances :

Measures to eliminate illicit demand for Narcotic drugs and psychotropic substances are set out as follows :

1. Each Member State shall take appropriate measures to prevent illicit cultivation of and to eradicate plants containing narcotic or psychotropic substances, such as opium poppy, coca bush and cannabis plants, cultivated illicitly in its territory.
2. The Member States may cooperate to increase the effectiveness of eradication efforts. Towards this end, Member States shall also facilitate the exchange or scientific and technical information and the conduct of research concerning eradication.
3. The Member States shall adopt appropriate measures aimed at eliminating or reducing illicit demand for narcotic drugs and psychotropic substances, with a view to reducing human suffering and eliminating financial incentives for illicit traffic.
4. The Member States may also take necessary measures for early destruction or lawful disposal of the narcotic drugs, psychotropic substances and substances listed in Table I and Table II of the 1988 U.N. Convention, which have been seized or confiscated.

D. Article 33 of the Convention on Rights of Child provides as follows :

“States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.”

E. The high-level segment of the fifty-second session of the Commission on Narcotic Drugs was held on 11 and 12 March 2009 to evaluate progress made since 1998 towards meeting the goals and targets established at the twentieth special session of the General Assembly for

1. Countering the world drug problem together;
2. To identify future priorities and areas requiring further action and goals and targets to be established for drug control beyond 2009;
3. To adopt a political declaration and other measures to enhance international cooperation. The member states pledged to adopt a political declaration and plan of action on international cooperation towards an integrated and balanced strategy to counter the world drug problem. The member states reaffirmed that the ultimate goal of both demand and supply reduction strategies and sustainable development strategies is to minimize and eventually eliminate the availability and use of illicit

drugs and psychotropic substances in order to ensure the health and welfare of humankind and encourage the exchange of best practices in demand and supply reduction, and emphasize that each strategy is ineffective in the absence of the other. They further agreed that amphetamine-type stimulants and psychotropic substances continue to pose a serious and constantly evolving challenge to international drug control efforts, which threatens the security, health and welfare of the population, especially youth, and requires a focused and comprehensive national, regional and global response, based on scientific evidence and experience, in an international and multi-sectoral setting.”

6. The situation is compounded by the fact that children are being encouraged to become drug peddlers, once a child is addicted to drugs.

Parliamentary intervention

7. Legislative interventions since 2000 have brought focus on the vulnerabilities of children, particularly in the context of substance abuse. The Juvenile Justice (Care and Protection of Children) Act, 2000 defined the expression “child in need of care and protection” to include “... a child who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts.” (Section 2(d)(vi)). Section 25 provided penalties in the following terms:

“Section 25. Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to juvenile or child:

Whoever gives, or causes to be given, to any juvenile or the child any intoxicating liquor in a public place or any narcotic drug or psychotropic substance except upon the order of duly qualified medical practitioner or in case of sickness shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.”

8. Parliament enacted the Juvenile Justice (Care and Protection of Children) Act, 2015 which received the assent of the President on 31 December 2015. The expression ‘child in need of care and protection’ is defined in clauses (viii), (ix) and (x) of Section 2(14) as follows :

“Section 2(14).Child in need of care and protection” means a child—

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(VOOOO who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or (OQO who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or (QO who is being or is likely to be abused for unconscionable gains.”

Section 3 enunciates the general principles to be followed in the administration of the Act. Among them are:

- (i) Principle of presumption of innocence;
- (ii) Principle of dignity and worth;
- (iii) Principle of participation;
- (iv) Principle of best interest;
- (v) Principle of family responsibility;
- (vi) Principle of safety;
- (vii) Positive measures;
- (viii) Principle of non-stigmatising semantics;
- (ix) Principle of non-waiver of rights;
- (x) Principle of equality and non- discrimination;
- (xi) Principle of right to privacy and confidentiality;
- (xii) Principle of institutionalisation as a measure of last resort;
- (xiii) Principle of repatriation and restoration;
- (xiv) Principle of fresh start;
- (xv) Principle of diversion;
- (xvi) Principles of natural justice.

Sections 77 and 78 provide penalties in the following terms:

“77. Whoever gives, or causes to be given, to any child any intoxicating liquor or any narcotic drug or tobacco products or psychotropic substance, except on the order of a duly qualified medical practitioner, shall be punishable with rigorous imprisonment for a term which may extend to seven years and shall also be liable to a fine which may extend up to one lakh rupees.

78. Whoever uses a child, for vending, peddling, carrying, supplying or smuggling any intoxicating liquor, narcotic drug or psychotropic substance, shall be liable for rigorous imprisonment for a term which may extend to seven years and shall also be liable to a fine up to one lakh rupees.”

The 2015 Act provides the legal framework. Stringent punishments have been provided. What is required is proper administrative implementation.

The need for a national data base

9. A counter affidavit has been filed in these proceedings on behalf of the Union Ministry of Social Justice and Empowerment. Surprisingly, the affidavit indicates that there is no authentic data on the number of victims of substance abuse in India. According to the Union Government, the figures quoted in the report of the Ministry of 2013-14 are only an approximation. In order to build a reliable database, a decision was taken to conduct a detailed round of national survey through the National Sample Survey Association (NSSO). NSSO expressed its inability to conduct the survey. The Ministry is stated to have approached the All India Institute of Medical Sciences for conducting a national survey on the extent, trend and pattern of drug abuse.

10. Generation of reliable data is an essential requirement of a policy aimed at curbing substance abuse. In the absence of accurate data at a national, state and sectoral level, policy interventions can at best remain ad hoc. For, in the absence of data there will be no realistic assessment of the nature and extent of policy interventions required having regard to (i) vulnerable states and regions; (ii) high risk populations; (iii) requirement of infrastructure, including de-addiction centres across the states : (iv) requirement of trained man power; and (v) requirement of rehabilitation, treatment and counselling services.

11. This is a basic deficiency which the Union government must redress at the earliest. We direct that the Union Government shall expeditiously conclude the national survey on drug abuse within a period of six months from today.

Immediate concerns

The immediate areas requiring remedial attention have been summarized below: I
Formulation of a national action plan for children;

u. Creation of a module containing an appropriate curriculum for children of all age groups in order to keep them away from drugs, alcohol and tobacco;

iii Setting up of de-addiction centres;

iv Establishing a standard operating procedure on enforcing the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 particularly Sections 77 and 78; and

v Implementing the action plan with the national policy on narcotic drugs and psychotropic substance which has been approved by the Union Cabinet.

The counter affidavit addresses the steps taken by MSJE thus :

“The Ministry implements Central Sector Scheme of Assistance for Prevention of Alcoholism and Substance (Drugs) Abuse under which financial assistance is provided to NGOs/Voluntary organizations for running Integrated Rehabilitation Centres for Addicts (IRCAs), organizing ^de-addiction camps and conducting awareness programmes, about the ill effects of Alcoholism and Substance (Drugs) Abuse on the individual, family, workplace and the society at large. At present the Ministry gives financial assistance to approximately 400 Integrated Rehabilitation Centres for Addicts (IRCAs), which are spread, all over the country, These IRCAs aim at enabling the addict to achieve total assistance and improve their quality of life. The IRCAs provide the whole range of community based services for the identification, motivation, counselling, de-addiction, after case and rehabilitation for whole person recovery (WPR) of addicts to make a person drug free, crime free and gainfully employed.”

The real need is to ensure the formulation of a National Plan so that all interventions are in accordance with a properly formulated national policy framework.

12. The Union Government has stated that a national policy on drug demand reduction is being finalized. The priority areas of intervention would include capacity building and training of service providers with a view to build up skilled manpower, education and awareness building at all levels and inter-sectoral collaboration. The policy also proposes to adopt a system of accreditation of de-addiction centres. The policy must in our view address the need for setting up de-addiction centres in every district and address specific vulnerabilities particularly in the context of high risk populations including children. We direct that this exercise be completed and that a national policy be formulated within a period of six months from today.

13. As regards the formulation of a curriculum incorporating appropriate aspects of generating awareness and sensitisation, an affidavit has been filed on behalf of the Department of Higher Education in the Union Ministry of Human Resource Development. On 4 December 2015 directions were issued in the present case in pursuance of which inclusion of issues relating to eradication of alcohol and drug abuse in the New Education Policy was taken up. A consultative process has been initiated by the Union Government. A committee was constituted on 31 October 2015 for the evolution of a New Education Policy (NEP). Out of 33 themes identified, 2 themes of school education are titled : (i) comprehensive education - ethics, physical education, arts and crafts; life skills; and (ii) focus on child health. This, it has been stated, would cover “the implied importance of the inclusion of issues pertaining to eradication of alcohol and drug abuse in the NEP.” MSJE has recommended tobacco and education on drug abuse within two of the above themes. This has been placed before the Committee. The court is informed that the Committee indicated on 30 December 2015 that the theme relating to eradication of alcohol and drug abuse will be included in its recommendations.

14. The importance of adopting a holistic solution to deal with issues pertaining to alcohol, tobacco and drug abuse in the school curriculum has to be adequately emphasized. We are of

the view that since the entire issue is pending consideration before the government, it would be appropriate to await the ultimate formulation. However, we may indicate that rather than resting on an “implied inclusion” of such an important subject within an extant head or topic, it would be appropriate if the competent authorities consider how children should be protected from the dangers of substance abuse. These are matters which should not be brushed under the carpet. The authorities should consider how children should be sensitised (having due regard to the age and stage of the child) of the dangers of drug use, the necessity to report drug use and the need to develop resistance to prevailing peer and social pressures.

15. The enormity of the problem makes it impractical for the judicial process to address all issues in one proceeding. We have addressed three systemic issues mentioned above. We have done so on the basis of the existing policy framework of the Union government, as evidenced by the material to which we have adverted in the prefatory part of this judgment. We have not laid down policy in exercise of judicial review. We have issued directions to enforce obligations under the existing legislative and administrative framework.

16. We proceed to summarise, our directions to the Union government, as indicated earlier :
The Union government shall

“(i) Complete a national survey and generate a national data base within a period of six months;

(ii) Formulate and adopt a comprehensive national plan within four months, which will among other things also address the areas of immediate concern noted earlier; and

(iii) Adopt specific content in the school curriculum under the aegis of NEP.”

17 We dispose of the writ petition with the aforesaid directions. However, we grant liberty to the petitioner to move the court in separate proceedings when it becomes necessary to do so including on various aspects which have been the subject matter of these proceedings.