

Restorative Justice for Addiction to Failure

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Abstract

India is a land where drugs and narcotic substance find link centuries back and find a route in cultural inheritance of the country. Its known as Land of Shiva, the god, with eccentric ways of worshipping through the substances we commonly call “Drugs” today. On the hand we can not blind side our eyes towards the menace of substance abuse which has rose in our country and the youth. In Narcotic Drugs Psychotropic Substance Act, 1985 (NDPS Act) reg-ulates and criminalises production, cultivation, manufacture, possession, sale, purchase trans-port, warehousing, use, consumption, import, transhipment of any narcotic drug or psy-cho-tropic substance except for medical and scientific purposes as per the rules, orders and conditions of license issued. In India we believe in restorative justice in cases of substance abuse, but we fail to realise the broader application of the justice to the victims of drug abuse. The paper critically analyses the mission of remedial equity is to repair the damage, as op-posed to treat or rebuff the guilty party. It also briefly studies the essential “The Seven Chal-lenges Program” bases in USA and adoption of the same. Exploratory in character, the present paper attempts to device effective tools to achieve objectives of the act, but also mov-ing a step ahead in global society by reviewing the list and causes of substances in the list in light of principles of constitution and restorative criminal justice. It is also throws light on essentials and duty of NALSA (National Legal Services Authority) through Legal services to the victims of drug abuse and eradication of drug menace scheme to sensitise the various stake holders in justice as well as the society.

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Introduction

India holds a spectrum of response to a global issue of drug consumption, ranging from traditional to modern, tolerance to prohibition. India has been affected by extensive substance use disorder, or what may be commonly called as addiction. In India production, consumption, cultivation, manufacture, possession etc of drugs is criminalized through The National Drug and Psychotropic Substance Act, 1985 (hereinafter referred to as NDPS Act.)²

With regards to a crime, offender is an individual, gathering or substance who has endured harmed either physically, candidly or mentally, mischief or misfortune as a result of an unlawful act. Victimisation refers to the process of being victimised. A hierarchy can be generally observed based on the suffering. While in case of drug abuse, the drug abuser, the individual is a victim and an offender at the same time, as the action reflects harm to oneself. Such crimes where victim does not exist or the offender is the victim, are called victimless crimes. The drug abuser here faces primary victimisation in matters of addiction to a drug, deterioration of health and also physical harm to oneself and then faces secondary victimisation of being stigmatised from the legal institutions, medical institutions, their own family, the community and the society.

While India works on the draconian concept of crime, criminologist across have successfully devised and researched to make a shift towards neo-liberal alternatives for victimless crime.

Research Methodology

For research, and materializing the concept, a web based research has been done through various journals, online material available. The research includes articles related with substance use. The author went through a series of original articles, case series, reports and implications. All data if used is secondary in nature.

Objective

The paper intends to analyse alternatives of punishments and stress, by stating downfalls of criminalisation of drug abuse “victims”. The intention to provide a solution of one of the global problem will surface by shifting the focus from pushing to prisons to rehabilitating. The paper makes an objective to study socio-legal aspects of drug abuse, and to traverse to criminological theories from instinctive reaction to rationality.

Socio-Legal Analysis

Current Legal Framework

²National Drug and Psychotropic Substance Act, 1985, No. 61, Acts of Parliament, 1985, (India).

The concerned, NDPS Act, 1985 hastily came into existence to give effect to treaties to curb drug menace. India has signed 1981 with United Nations treaty and several others. The NDPS Act prohibits cultivation, production, possession, sale, purchase, trade, import, export, use and consumption of narcotic drugs and psychotropic substances except for medical and scientific purposes in accordance with the law. Preparation and aiding to commit such crimes is also punishable.

Narcotic drugs additionally fall under the covering class of "made drugs". Psychotropic drugs do not characterize but rather incorporate all drugs advised by the administration, all things considered. Amphetamines, methamphetamines, LSD, MDMA even, buprenorphine among others are on the same premise, which the administration may extend or choke based on evidence of genuine or potential 'abuse' or changes in planning under worldwide conventions. The NDPS Act sets out the strategy for seek, seizure and capture of people out in the open and private places. Safeguards, for example, earlier account of data, telling a tale of predominant, restricting forces of capture to assigned officers, illuminating the individuals being looked of her/his rights which have been circumspectly upheld by the courts, in light of the stringent disciplines endorsed under the Act.³ In the meantime, standards for examination and evidence are tolerant and have been deciphered in a way that is partial towards the accused.⁴ Whereas the NDPS Act is punitive, inflicting punishment.

NDPS, openly goes against the principles of proportionate punishment,⁵ Right to Life by providing stringent punishments such as death penalty creating act of consuming drugs more stringent than an act of murder. In the same way as other different nations in Asia, India has used exceedingly cruel measures for drug control. Numerous aspects of the NDPS Act, for example, the criminalization of drug utilize, discipline for ownership of drugs for individual utilize and the capital punishment are more strict or extreme than those given by the UN drug control conventions. In spite of endeavors by common society to illustrate the incapability of such measures and feature their non-mandatory status under the universal drug conventions, officials have not focused on inspecting or canceling these provisions.

Criminalisation and Penalisation under NDPS Act

Consumption of drugs is unlawful and brings about a prison term of up to half a year or one year as well as a fine, contingent upon the substance consumed. The utilization of heroin and

³State of Punjab v. Baldev Singh (1999) 6 SCC 172.

⁴Raj Kumar Karwal v. Union of India (1990) 2 SCC 409 and Kanhaiyalal v. Union of India (2008) 4 SCC 668.

⁵Raju v. State of Kerala AIR 1999 SC 2139.

cocaine will lead to a lengthier sentence of detainment while cannabis will prompt a less serious sentence. The class of "possession of little amount for individual consumption" was finished away with in 2001 and by and by, ownership of little sums draws in uniform discipline, regardless of aim.

In spite of the fact that implied for genuine offenders, limitations on allow of safeguard were likewise being connected to cases including consumption or possession of little measures of drugs. Courts have cleared up that individuals accused of offenses including little amounts of drugs have a privilege to get safeguard. However, not one or the other police nor individuals who consume drugs appear to be mindful of the law, aimless attacks and captures, particularly of road clients are not uncommon. Official crime statistics don't uncover what extent of drug law captures and feelings are led against users or low-level guilty parties (including little amount offences) as contradicted to 'traffickers' (including bigger amounts of drugs). Since the law itself does not recognise between ownership for individual consumption and possession with plan to offer revenue driven, it is hard to remark definitively on whether the requirement is focused at 'users' or 'traffickers'.

Solution under NDPS Act, 1985

National Fund

A National Fund for the Control of Drug Abuse was built up in May 1989. Standards for its organization were told right around twenty years afterward, in 2006. The fund can get commitments from the focal government, person contributors and continues from the offer of property relinquished from drug trafficking. Applications are screened by a representing body, which includes a senior officer and different individuals delegated by the government. NGOs and government divisions are qualified to make demands for awards for drug control exercises including treatment. Preventive instruction and mindfulness on the 'ills' of drug reliance have been organised for funding.

The treatment for addiction appears to find last spot in priority list of the act. In spite of rules providing for hospitals and de-addiction centers, rehabilitation of victims does not fall in place. Rather than restorative care, 'repercussions' are distributed to patients, incurring serious torment and, now and again, causing death. These occurrences have become visible from all over India, demonstrating that current standards around least quality principles of care are most certainly not being taken care of. Regardless of the organisation of statutory

rules, individuals who use drugs are forcefully detained and experience savagery, violence, ruthlessness, brutality and violation of a large group of other human rights infringement in such centers.⁶

Legal and Social Issue

Victimology of a Drug Abuser

The effects of drug abuse stretches out from the ones experiencing this issue and it additionally reaches out to family and the network. The mischief caused by drugs isn't simply because of the kind of substance used but at the same time is how it is expended. The mix of the kind of substance abused and the manner in which it is devoured also hurts an individual. Substances can be regulated in the body through various media, for example, oral ingestion, intravenous, grunting.

At the point when these substances enter the body, it prompts various physiological and mental changes. These progressions are the reason of reliance of individuals on the substance prompting fixation. Persistent and exorbitant abuse prompts confused medical issues and much of the time, these infections turn out to be lethal to the human life. Another noteworthy wellbeing concern is the spread of HIV through intravenous abuse of drugs by utilization of tainted syringes and infusion gear.

Victim of Misfortune on Work/Financial Variables

Drug abuse prompts a great deal of monetary shakiness among the groups of the abuser. The abuser as well, in requests to acquire substance however has no cash to get it, resorts to wrongdoings of robbery, taking and theft thus making him/her into a criminal.

Victim of loss of Family and Community: Family is the essential unit of any general public. At the point when families are separated, it shows the passing of a social life which thusly prompts the disturbance of a general public all in all.

This makes it possible to see the person affected by drugs as victim who can be cured and not an offender, the layers of stigma which an addict faces in various phases which leads to victimization of the abuser is illustrated below.

Prison Versus Treatment

Rather than condemning a drug subordinate individual indicted for a low-level drug offences to detainment, the court can, in the wake of surveying her/ his experience and wellbeing status and getting assent, remand her/him to a treatment office kept up or perceived by the administration. Treatment gets to is dependent upon accommodation of restorative reports.

⁶Talwinder Pal Singh v. State of Punjab, CrI. Misc. No. M- 26374 of 2008.

Rather than penalising, courts can redirect drug subordinate individuals sentenced for Consumption or an offence including a little amount of drugs, to a perceived medicinal office for detoxification. To date, few individuals, assuming any, have profited from this arrangement that bails out or avoids prosecution. One of the fundamental explanations behind this is that numerous individuals stay in prison while experiencing initial withdrawal due to the proceedings in court, which more often takes more than quite a while to finish up. In that capacity, when the conviction is articulated, the sentence is set off against the period the individual has officially spent in jail. Thus, there is subsequently no option to occupy him/her to treatment as another option to the jail sentence which has viably as of now been served.

As mentioned above, the treatment is ignored in the execution of the NDPS Act, treatment arrangements have been neither organised nor connected vigorously by courts. By and large, a man is rebuffed for acts which cause damage to others. The penalisation, war on drugs is a fail mechanism which violates right to life, right to health, and construes to be against the basic principles of life.

The legislature must realise to resist and change the penalising laws due to violation of rights, and the prison system does not full fill the objectives. Mankind has shifted from the state of nature towards the civilised society and it is no longer the opinion to put an iron-fisted approach over mental illness.

Right to Health is Violated

Addiction is not a choice, or a question of willpower but a disease. Addiction affects multiple circuits of the brain, and also changes the natural functioning of brain. What initially comes ecstatic pleasure to brain becomes necessity. Use of drug reduces production of dopamine, and thus the only sane way remains through, thus uncontrollable craving. The situation can worsen to sensations, and everyday activities which without drug may look like impossible task.

“Addiction is a chronic, often relapsing brain disease that causes compulsive drug seeking and use, despite harmful consequences to the addicted individual and to those around him or her. Although the initial decision to take drugs is voluntary for most people, the brain changes that occur over time challenge a person’s self-control and ability to resist intense impulses urging them to take drugs.”

The Offender is Forced to Consume Further

The legislature must rehabilitate and not punish in order to protect rights of the victim. The victim involuntarily due to the biology is forced to consume drugs. Thus it is the duty of the

state to provide treatment rather than prosecution. In the case of drug offenders the offenders are themselves the victims, and it is not the nature of punishment to be inflicted on the victim. The major cause substance abuse disorder is aloofness of the society. It is essential that these victims are brought back to the society, and healthy relations. The prison creates more stigmas around victims, making them fall deeper in the pit.

Drug addiction is a relapsing disease, thus, the treatment is not to throw them out in the society but to reform and rehabilitate which cannot be achieved through penalising.

To summarise according to retributive Justice: Crime is an infringement of the law, and the state is the victim. The point of justice is to build up fault (coerce) and oversee torment (punishment). The procedure of justice is a contention between enemies in which the offender is hounded against state rules, aims exceed results and one side wins while alternate loses. Restorative Justice Crime is an infringement or mischief to individuals and connections. The point of justice is to distinguish commitments, to address issues and to advance recuperating. The procedure of justice includes victims, offenders and the network with an end goal to recognize commitments and arrangements, boosting the trading of data (discourse, common understanding) between them. To put restorative justice in its most straightforward shape: crime disregards individuals and infringement makes commitments. Justice ought to include victims, offenders and network individuals in a hunt to recognize necessities and commitments, in order to advance mending among the gatherings included, and thus in the said crime there exist a need to shift towards restorative justice.

Solutions

An increasing interest to alternatives of draconian stem of criminology that criminalises, incarcerates the victims have been searched and studied over a long time showing incarceration for non-violent, victimless crimes has proved to be less cost efficient than treatment.

A punishment usually analyses the crime, the victim, circumstances, effects to decide whether the punishment is to remove the element from society, rehabilitative, reform or punish. While the elements of rehabilitation and reform have taken a backseat in the criminal justice system today, they form the essential pillars of society.

The article deals with different types of alternatives focusing of rehabilitation namely, community corrections, restorative justice, through drug courts, discussing the implementation of seven challenge programme.

The common characteristics that the alternatives share are:

1. They require active participation of the offender in the community service and society, in the instant case, the offender is the victim and thus for an effective reformation active participation is needed that prison doesn't provide.
2. They are cheaper than prison.
3. These alternate provide a connection to society which acts effectively from drug victims as discussed.

Restorative Justice

Restorative justice is an alternative approach to conventional theory of justice. The conventional theory includes trial to punish the offender to establish harmony. The restorative justice theory focuses on stakeholders, the victim and the offender with members of society to negotiate and deliberate to achieve satisfaction and restore faith in law. It focuses on reform and academically research has established that offender is less likely to commit crime again.

As mentioned, substance abuse is a victim-less crime, where offender is the victim. It involves a situation of dependence and might result in relapse, It is essential that a shift is made from traditional theories of crime. An unmistakable component of restorative justice is that it takes a gander at the requirements of victims which are today outside criminal justice concerns, prompting disappointment and distance of victims from the framework itself. Everything about the "restorative lens" see is to the greatest advantage of the victim, what's more, society. While restorative justice will take numerous structures, it is this extraordinary state of mind that is generally essential.

Drug Courts

Drug courts are judicially managed court dockets that give an option of treatment joined with supervision for individuals living with genuine substance abuse and psychological wellness issue. Medication Courts are critical thinking Courts that adopt a general well-being strategy, utilizing a particular model in which the legal arraignment, barrier bar, probation, law requirement, emotional wellness, social administration, and treatment networks cooperate to help dependent wrongdoers into long term recovery. The goal of both of these types of Court is to reduce the drug abuse and crime that take place rather than punishing the offender.

The structure of drug courts differs across jurisdictions yet they all offer three principle highlights. The structure of medication courts contrasts crosswise over wards, yet they all offer three principle normal highlights. To begin with, they utilize "lawful and outer pressure "through the power of the judge to command individuals to drug treatment. Second, the

victims advance in drug treatment is vigorously checked by the drug court judge through instruments, for example, reports from treatment suppliers and required medical testing. Drug testing is viewed as a key component of medication courts and a way that restraint from medications can be "objectively" and "reliably" observed. Third, medicate courts utilize an assortment of assents to rebuff rebelliousness and motivators to remunerate advance. Authorizations offer a "quick and composed reaction to resistance" that is "swift and coordinated response to noncompliance". Drug courts rouse conduct through the educated utilization of approvals and motivating forces. A motivating force may not be tangible nor should an approval be harsh.

Approvals can incorporate open alerts in the court, expanded recurrence of drug testing, fines, imprison and, at long last, end from the program (and a specific jail sentence). Prizes can incorporate open acclaim from the judge, services checking headway to the following treatment stage, a reduction in the recurrence of required court appearances, and graduation from the program. Straightforward acclaim for something like finishing a period of treatment when conveyed instantly and reliably is extremely effective. Similarly, the apparent seriousness of endorse from fines to probation to imprison does not seem to deterrent affect future behaviour is the assurance of an authorise that inspires conduct.

Drug courts programs usually last for a year that is near the prison sentence, but works more effectively as it incorporates the affected victims (offenders) back in the society. During that time substance abusing offenders are assessed and placed into an appropriate treatment program. The court supervises victim's progress in treatment and abstinence both. The longer a victim spends time in treatment, a better outcome is seen. Drug courts have the ability to coerce individuals into treatment and keep them there longer, on the grounds that the performance is not justified.

Training

A center standard for any drug court is that group members take part in cross-disciplinary training. Training points incorporate fixation, accessible treatment modalities and drug testing. The purpose of extra training isn't so the judge, open protector, lead prosecutor or other colleague will turn into an advisor. Be that as it may, the training informs the team member about what the drug court member is encountering as the guilty party battles through enslavement, struggles of addiction, withdrawal symptoms, treatment, and aftercare. The training does not stop with the fundamental subjects, but rather likewise incorporates

exercises on spurring conduct through the educated utilisation of approvals and motivations, culturally diverse issues and morals.

Why Drug Courts are More Efficient

Research with respect to drug courts adequacy is accessible. Dr. Stephen Belenko achieved the accompanying conclusions in the wake of looking into assessments of 30 drug courts:

1. Drug courts have been fruitful in connecting with and holding lawful offense wrongdoers in automatic and treatment administrations who have generous substance abuse and criminal narratives yet minimal earlier treatment commitment;
2. Drug courts give far reaching and closer supervision of the drug-consuming guilty party than different types of network supervisions;
3. Drug use and criminal conduct are generously lessened
4. Criminal conduct is brought down after program support, particularly for graduates, albeit few investigations have followed recidivism for over one year post-program
5. Drug courts create cost investment funds, at any rate for the time being, from diminished correctional facility/jail utilize, lessened culpability and lower criminal equity expenses; and
6. Drug courts have been very effective in crossing over any barrier between the court and the treatment/general wellbeing frameworks and impelling more prominent collaboration among the different organizations and work force inside the criminal equity framework, and additionally between the criminal equity framework and the network.

Seven challenge programs is used to self-heal victims which according to psychologist the most effective long term solution to drug addiction.

1. Accepting addiction and taking steps to cure it.
2. Reasons of addiction, eventually curing past traumas.
3. Harm caused, physical mental and emotional and healing it.
4. Taking responsibility in society again.
5. Setting achievable goals on path to de-addiction and finding life away from it.
6. Thoughtful decisions.
7. Getting over options of relapse.

Conclusion

The correlation appropriately illustrates, the Drug Court is intended to guarantee that reactions to guilty party consistence and resistance are both sure and quick, while the convention-al framework does not and can't moreover react. Restorative justice isn't a dream

arrive pro-gram, it is effectively being executed in New Zealand, United Kingdom, and Canada, and additionally in Minnesota, New York, Texas and Vermont. Thus, drug courts spur conduct change by considering members responsible.

Whenever detainees are discharged they lack professional aptitudes and skills, are more removed than any time in recent memory from society's qualities and have been prepared at "a definitive crime school." Drug courts, network revisions, community corrections, restorative justice can give more important, just and helpful resolutions for society and victims. Rediscovering rehabilitation isn't tied in with being delicate on criminals; it is about utilizing our monetary and Human Resource carefully.

As submitted, the drug victims suffer from mental and social illness. Drugs make hormonal changes. Victims are aloof from society and have lost touch, it is necessary in a country like India, where youth at large has suffered from menace to move towards idea of rehabilitation of victim instead of providing harsher penal punishments, not rehabilitating and ultimately creating a chain for the victims.