

Why the anti-narcotic laws of our country needs an urgent reform

Likhitha P Lister¹

Abstract

India is home to approximately 3 million drug addicts according to the National Crime Records Bureau. This article builds on the urgent need to reform the present Anti-Narcotic Laws present in the country, it stresses on the importance of rehabilitation facilities and medical assistance rather than penal punishment. The article will provide an observation on the NDPS act (Narcotic Drugs and Psychotropic Substances Act ,1985), the famous exit routes section 39 and 64A, The Prevention of Illicit Trafficking in Narcotic Drugs and Psychotropic Substances Act, Article 47 of the Indian Constitution. The Paper undertakes a review on the drug policies adopted by the Netherlands, Portugal and some parts of the US on how they decriminalised their drug policy instituting public health models. The author argues on various reasons to reform the present anti-narcotic laws in the country. The article concludes on the merits of reforming the law and protecting the citizens

Introduction

India passed the Narcotic Drugs and Psychotropic Substances Act , (NDPS Act) in 1985² which was subsequently amended in 1989 , 2001 and recently , in 2014 . The consumption of drugs is prima facie criminalized, the Act does make the two category of Traffickers –who are subject to strict penal action – and Individual consumers, who can be given rehabilitation. The Act forbids and criminalizes the cultivation,production,sale,purchase,possession, use consumption,import, export of narcotic drugs and psychotropic substances. The Act provides immunity in places where the drugs are used for medical or scientific purposes.

Article 47 of the Indian Constitution³, prescribes restriction on the use of drugs and directs the State to strive to suppress and abolish the use of drugs , with exception on scientific research .The legislation covers three classes of substances , which are Narcotic Drugs (

¹Likhitha P. Lister, 3rd Year student of integrated five-year BA LLB course enrolled at Government Law College, Thiruvananthapuram, Kerala.

² Narcotic Drugs and Psychotropic Substances Act, No. 61, Acts of Parliament, 1985.

³ INDIA CONST. art. 47.

cocoa leaf , poppy straw , opium and cannabis) , Psychotropic Substances (Amphetamines , Metaphetamines, LSD) and Controlled Substances (used in the manufacture of any narcotic drug or psychotropic substance)

The Prevention of Illicit Trafficking in Narcotic Drugs and Psychotropic Substances Act⁴ came into force in 1988. It contains provisions for preventive detention of any individual who is suspected of or charged with drug trafficking.

But still India is home to more than 3 million drug addicts and 70 million drug abusers. The most disturbing trend is the sky rocketing of usage of synthetic drugs even among children. Data on drug seizure by the Narcotics Control Bureau states that the consumption and smuggling of synthetic drugs, which are highly dangerous and addictive than the natural ones has been increasing at high levels while that of natural drugs are decreasing.

Objective

The NDPS Act, although made with good intentions, ends up having a negative influence among drug users and youth of our nation. It is based on a faulty assumption that punitive measures deter trafficking and drug abuse, as a result people who use drugs find themselves coming into conflict with the law pushing them into margins of the society. Our present Policy treats drug addiction as a criminal offence rather than a public health issue, which is why it needs an immediate reform.

Legal analysis

India's Principal Law isn't free from pitfalls. It contains no perceptible distinction between a consumer and an addict. The existing definition of addict is neither medical or legal. During the discussion of the bill in 1985, the words 'consumer' and 'addict' were used interchangeably. The It mentions terms like 'consumption', 'possession' and 'use' but fails to elucidate what they truly mean. Although the intent of the law at the time of enactment was to specifically deter drug traffickers, MPs argued for imprisonment for all, irrespective of whether they were traffickers or consumers.

The strictness of NDPS act is clearly shown by provision for awarding death penalty in case of repeated offences, like production, manufacture, possession, transportation import and the

⁴ Narcotic Drugs and Psychotropic Substances Act, No. 61, Acts of Parliament, 1985.

export of drugs. The 2014 amendment held that the decision to award death penalty lies at the discretion of the court and instead suggest 30 years of imprisonment as substitute.

The unclear legislative intent also prevents the addicts from using the exit routes – section 39 and 64 A which allows them probation and immunity from prosecution when they volunteer for treatment. These exit routes are the most unused provisions in the statute, leaving the addicts forever trapped in the penal system. Both the police and the judiciary share a lack of understanding of the Policy and its mechanism for rehabilitation, eventually handicapping the institutions established for the same.

The NDPS Act seeks to provide “treatment, education, aftercare, rehabilitation, social re-integration of addicts”. Section 64A⁵ provides ‘immunity’ from prosecution to addicts seeking treatment. However, to seek treatment “proof of addiction” – a psychosocial condition is mandatory.

It also included waiting for framing of ‘charge’ and ‘implied admission of guilt’. This step resulted in the undermining of the intention of legislation, which was to discourage criminalization of drug dependency but to encourage the treatment seeking. Section 64A was not reformed in the 2014 amendment. It is to be noted that first time and occasional users are not eligible for treatment and will be charged with criminal proceedings.

The Parliamentary Standing Committee Report of 2011, which dealt with section 27 (Punishment for Personal Consumption of Narcotic and Psychotropic Substances) miserably failed to adequately address the issue of rehabilitation. The Committee still continued to conceptualize rehabilitation within the ambit of criminalization

Social analysis

According to statistics there are approximately 70 Million drug abusers in India. Between the span of 2009 and 2012, consumption of cocaine and ephedrine increased by over 250% and that of Morphine increased by over 500 % while among natural extracts, only Opium saw an increase because it was used to manufacture heroin. Which clearly states that the usage of synthetic drug usage which is more dangerous and addictive than the natural ones are increasing in our country.

⁵ Section 64A, Narcotic Drugs and Psychotropic Substances Act, No. 61, Acts of Parliament, 1985.

According to a study conducted by the National Commission for Protection of Child Rights (NCPR), conducted in 27 states of India by AIIMS, heroin use among children was highest in Meghalaya 27.3%, followed by Punjab 19.3%. In Delhi, Uttar Pradesh and West Bengal it was 10 %. In Jharkhand, Jammu and Kashmir and Orissa it was less than 15%. It is shocking to note that 13% of children from Punjab, 88.6% from Mizoram ,25 % from Meghalaya and Rajasthan, 23.5% in Maharashtra abuse injectable drugs. The use of injectable drugs also exposes abusers to a much greater risk of contracting diseases such as HIV / AIDs and Hepatitis,

These statics clearly shows the problem with the present drug laws of the country. The stringent penalties very little or nothing at all from deterring the citizens from substance abuse. The drug abuse scenario inn states like Punjab has become so worse that, more than half of all rural households are home to at least one drug addict. The incarceration of users and criminal charges destroy the chances of rehabilitation into the society. Fear of being given strict punishments, abusers are reluctant to come out seeking proper medical care instead choose to lead a life of drug dependency.

Not only our Policy didn't work, it leads to some other problems too. In some places like Punjab it led to overcrowding of prisons. Statistics show that 45 % of prisoners in Punjab are reconvicts and under Trial jailed under the NDPS Act.⁶

During the Parliamentary Debates of 1985 and 89, it was suggested that Section 71, the provisions for rehabilitation needs to be given more importance, by placing certain obligation on the government to establish necessary medical facilities. The plan was to operationalize the provision with necessary budget allocation, setting up of supervisory boards, collaborating with the Ministry of Social Justice and Welfare to ensure effective rehabilitation etc. As time passed this approach dwindled and measures made earlier were not followed.

The notion to legalize drugs

In India the use of charas (hash), bhang and weed were celebrated for centuries. it was a part of faith and mysticism.However, implementation of the stringent laws made the sale,consumption, production and transportation of drugs illegal in the country.

⁶ Narcotic Drugs and Psychotropic Substances Act, No. 61, Acts of Parliament, 1985.

The Legalization will eliminate illegal trade and associate crimes replacing black market production and new market will be controlled by government, farmers and merchants not by criminals and drug dealers. It will also ensure good quality items are sold to the consumers because the government will be regulating the production and sale

While 32 % of people who use tobacco, 15% who use alcohol became dependent on it but only 8 % of those who use marijuana became clinically dependant. It is proven that it's virtually impossible to overdose marijuana, has limited withdrawal symptoms and its use cannot be fatal.

Analysis of alternative policies around the world

In 2001, Portugal decriminalized possession and use of drugs. Alongside decriminalization Portugal also shifted drug control from the Justice Department to The Ministry of Health and introduced a Public Health Model for treating hard drug addiction. So far the results have been coming out good. According to Transform Drug Policy Foundation, the proportion of population that reported using drugs increased initially after decriminalization, and then steadily declined. Drug use has declined among the 15-24 year demographic. There has also been a very steep decline in the population who first experimented with drugs and then continued to use them. Drug induced deaths have decreased steeply, so as the HIV infection rates. After decriminalization, the number of people imprisoned on drug related charges decreased and the number of visits to addiction clinics increased.

On December 10, 2013 Uruguay became the first country in the world to completely legalize marijuana. The Law's main intention was not to encourage the smoking of weed, but to seize an already existing market from illegal drug dealers. For Uruguay, this was not an experiment in freedom and personal choice. It's a health and public safety issue that requires governmental action.

Conclusion

Unless we take effective measures immediately, the reformative aim of the legislation will go in vain. An examination of the harsh provisions and respecting the rights of all those individuals who depend on drugs is a must. Collecting data, conducting research on drug dependence, substance use and effects on health on addicts can make us win the war against drugs. It is high time we are need of evidence based approach dealing with drug

dependency, rather than insisting on an abstinence only approach. By the failure of the current policy it is clear that prohibition is not the answer to tackling the drug problem. The solution is to either legalize or decriminalize drugs, and in regulating the market, this must be done with a comprehensive health policy that is aimed with proper medical assistance and rehabilitation facilities for drug abusers.