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Review Paper

Examining the Humanity of Provisions of Narcotic Drugs and Psychotropic Substances Act Law and Procedure in India: A Review

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ABSTRACT

In India the law on Narcotics NDPS is a bit harsh. In adversarial system in India accused is considered guilty unless proved to be guilty. In NDPS ACT it is the opposite. The paper examines the law and procedure on the area.

Introduction

The NDPS Act of 1985 was established to regulate activities related to narcotic drugs and psychotropic substances and to uphold the terms of international agreements on these substances. Its overarching goal is safeguarding the Indian populace from the dangers associated with such substances. However, despite India's commitment to international drug conventions, it is also bound by the UN Convention on the Rights of Persons with Disabilities (UNCPRD) and has implemented the Mental Health Care Act of 2017. Some aspects of the NDPS Act may seem inconsistent with the human rights principles of individuals affected by drug use. Therefore, it is imperative to ensure that all legislation aimed at protecting individuals' health, well-being, and rights are harmonized.

The Principle of Reverse Onus Under Section 35 Of NDPS Act, Questioning The Constitutionality Principle. The presumption of innocence is a fundamental tenet in criminal law, deemed essential within the framework of "due process of law" as outlined in Article 21 of the Constitution by the Supreme Court. However, there have been instances where this presumption has been compromised in favor of other principles deemed of 'higher' importance, such as public welfare.† An example of such compromise is seen in Section 35 of the NDPS Act, which introduces a "reverse onus clause." This clause presumes a culpable mental state for all offenses under the Act, placing the burden on the accused to prove their lack of culpable mental state beyond a reasonable doubt. In this article, I address three key questions regarding this provision. Firstly, what are the justifications for the state to enact such a law? Secondly, given these justifications, can laws granting extensive powers to the

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† Criminal Law Studies, NLU's Blog' (April 10, 2024), available at: <https://criminallawstudiesnluj.wordpress.com/2024/04/10/negotiating-with-constitutionality-retention-of-the-reverse-onus-clause-in-sec-35-of-the-ndps-act/>

state be protected under the presumption of constitutionality? And finally, is there a way to reconcile the legal presumption of innocence with the presumption of constitutionality while maintaining a balance between the two? As per International Covenant on Civil and Political Rights (ICCPR), “every person to have a “right to be presumed innocent until guilty and given a fair trial.”‡ As per Human Rights Development Program, (HRDP), “Compulsory detention, even if it has a basis in law, may also constitute arbitrary detention where it is random, capricious or disproportionate – that is, not reasonable or necessary in the circumstances of a given case and shall ensure that they are not detained solely on the basis of drug use or drug dependence.” It uplifts the virtue of right to equality.§ The report presented by the High Commissioner for Human Rights (HCHR) to the Human Rights Council underscores potential human rights violations within a criminal justice system. It specifically mentions instances where the burden of proof is shifted in criminal proceedings against individuals found with drugs surpassing specified limits or in possession of keys to a location where such drugs are discovered. In these cases, individuals are presumed guilty of drug trafficking.** Numerous provisions within the Indian Judiciary uphold reverse burden clauses. Two such provisions exist in the NDPS Act. Firstly, Section 54 presumes the guilt of an accused if they fail to provide a satisfactory explanation for possessing contraband. Secondly, Section 35 establishes a presumption of a 'culpable mental state' in prosecutions against the accused. This presumption has historically been rigorously enforced, resulting in disproportionately harsh punishments for the accused and prompting concerns from Human Rights Organizations.

The Supreme Court of India has addressed this issue in various judgments, emphasizing that the prosecution must establish the 'initial facts.'†† For instance, if the accused is found in 'conscious possession' of the contraband, it creates a presumption of guilt, shifting the burden back to the accused to refute this presumption. Notably, in practice, the prosecution is not required to prove that the accused knowingly possessed the contraband itself; rather, they only need to demonstrate physical possession of the contraband. This places the burden on the accused to prove their lack of knowledge regarding such possession.

The Unwarranted Issue of Re-Testing Mechanism

Any Narcotic Drugs and Psychotropic Substances or any contraband good can be retested only under extremely exceptional circumstances by stating credible and cogent reasons in writing by the authority, is being reiterated many times by court of law. The situation is exacerbated by the practice of entertaining applications for re-testing, despite the fact that the NDPS Act does not explicitly provide for such re-testing.‡‡ In the case of *Thana Singh v. Central Bureau of Narcotics*§§ opined that “retesting applications add to delays as they are often received at advanced stages of trials after a significant lapse of time. While re-testing may be an important right of an accused, the haphazard manner in which the right is imported from other legislations without its accompanying restrictions, however, is impermissible.”

A significant influx of applications for re-testing has exacerbated the strain on already overwhelmed laboratories. Despite this, the Supreme Court has clarified that the NDPS Act does not authorize re-sampling or re-testing of samples except in exceptional circumstances. Additionally, the Court has instructed states to designate nodal officers to oversee trial progress and prevent unreasonable delays due to witness or document unavailability.

The Debate Of Quantity Vs Quality

There has been considerable debate surrounding the determination of the quantity of drugs necessary for prosecuting an accused individual. It is essential to recognize that access to controlled substances for medicinal purposes is integral to the right to health. Despite the Act permitting medical use of certain narcotic drugs, severe penalties have discouraged hospitals and pharmacies from stocking them. In 2008, the Supreme Court of India delivered a landmark judgment in *E. Micheal Raj v. Intelligence Officer, Narcotics Control Bureau****, establishing that the purity of the drug is crucial in determining the severity of the sentence.

However, shortly after this judgment, in 2009, the Department of Revenue of the Government of India issued a contradictory notification proposing punishment based on the total weight of the drug possessed, not just its pure content. This notification created a conflict between the judiciary and the legislature, complicating adjudication under the NDPS Act.

‡ Office of the United Nations High Commissioner for Human Rights, 'International Covenant on Civil and Political Rights' (accessed April 17, 2024), available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

§ United Nations Development Programme, 'Human Rights' (accessed April 17, 2024), available at: <https://www.undp.org/rolhr/human-rights#:~:text=Human%20rights%20are%20a%20necessary,commitments%20agreed%20by%20Member%20States>

** Office of the United Nations High Commissioner for Human Rights, 'About Us' (accessed April 17, 2024), available at: <https://www.ohchr.org/en/about-us/high-commissioner>

†† *Noor Aga v. State of Punjab*, (2008) 16 SCC 417

‡‡ *State of Kerala v. Deepak. P. Shah*, ILR (2001) 2 Ker 398

§§ (2013) 2 SCC 603

*** (2008) 5 SCC 161

More recently, in the case of *Hira Singh v. Union of India* in 2020, the Supreme Court ruled that when assessing the quantity of contraband seized from a mixture containing neutral substances, the quantity of these neutral substances should also be considered.

The determination of quantity in NDPS cases is crucial as the severity of punishment varies significantly depending on it. Another significant development occurred in the case of *Indian Harm Reduction Network v. Union of India*⁺⁺⁺ in 2012, where the Bombay High Court interpreted Section 31A to replace mandatory death penalty with discretionary death sentence, citing it as violative of Article 21 of the Indian Constitution and hence unsustainable.

Death Penalty And The Dilemma Of Deterrence Under NDPS Act

Currently, approximately 32 countries worldwide enforce the death penalty for drug-related offenses. Among them, around 112 countries, including India, impose mandatory capital punishment for such offenses. In nations like China and Iran, a significant number of executions involve individuals convicted of drug-related crimes. Advocates for capital punishment argue that drug trafficking is even worse than murder due to its long-term harmful psychological effects. While global law has not entirely abolished capital punishment, international humanrights experts have outlined certain conditions for its application. These conditions include refraining from imposing the death penalty on minors or pregnant women and reserving it only for the most serious crimes, typically those involving intentional loss of life. However, activists argue that drug abuse does not warrant the retention of capital punishment even in the rarest of cases. In 1997, the United Nations Human Rights Commission⁺⁺⁺ urged India to limit the use of capital punishment to the most serious crimes and consider its eventual abolition. The United Nations Office on Drugs and Crime oversees global drug control measures and has condemned the death penalty as an ineffective tool for combating illegal drug trafficking.

Examining Section 31-A of the Act, it applies in cases where an individual has been convicted of various offenses, including unauthorized trade in opiate drugs and psychotropic substances, funding illegal drug trafficking, and possessing commercial quantities of narcotics. Therefore, a judge must consider the character of the offender, the circumstances of the case, public opinion, and choose the appropriate sentence accordingly.

The NDPS Act lacks a clear distinction between minor offenders and serious offenders, leaving the decision to the courts based on the severity of the offense. The 2001 Amendment Act introduced graded sentences for narcotic drug offenses for the first time, setting a higher threshold for minimum punishment. It's noteworthy that the Supreme Court of India upheld the constitutionality of this provision. The number of under-trials under the NDPS Act has been consistently increasing, as evidenced by the annual publication 'Prison Statistics India' (PSI) from 2016 to 2019. This trend is highlighted in the following bar graph, based on PSI data. Due to the current punitive approach of the Indian justice system, many individuals with illicit drug use disorders, even those involved in small quantities, are compelled to endure overcrowded jails and lengthy incarcerations due to pending trials.

Trend Of Punitive Measure Over Rehabilitative Measure

The Narcotic Drugs and Psychotropic Substances Act of 1985 (NDPS Act) reached its 30th anniversary without significant public or parliamentary debate on its conflicting goals of rehabilitation and deterrence, leading to its overall ineffectiveness. Enacted to meet India's international obligations and combat drug-related issues, the law aimed for stringent penalties for traffickers and assistance for addicts' rehabilitation. However, due to misunderstandings among law enforcement and judicial bodies, the implementation of rehabilitation measures has been lacking.^{§§§} Parliamentary discussions have highlighted uncertainty regarding the Act's original purpose, with lawmakers wavering between deterrence and rehabilitation aims. Despite amendments and committee reports, the rehabilitation aspect remains under-addressed, compounded by ongoing confusion over the definitions of addicts and consumers.

Additionally, the establishment of institutions for monitoring and executing rehabilitation has lacked political support.^{****} Despite recommendations for institutional backing and rehabilitation mechanisms, they have often been disregarded. Recent amendments have further sidelined rehabilitation efforts, despite urgent needs in states like Punjab. Furthermore,

⁺⁺⁺ (2012) Bom CR (Cri) 121

⁺⁺⁺ Office of the United Nations High Commissioner for Human Rights, 'Commission on Human Rights' (accessed April 17, 2024), available at: <https://www.ohchr.org/en/hr-bodies/chr/commission-on-human-rights>.

^{§§§} 'The Wire' (accessed April 17, 2024), available at: <https://thewire.in/law/indias-anti-narcotics-law-is-in-urgent-need-of-rehab>.

^{****} 'The Wire' (accessed April 17, 2024), available at: <https://thewire.in/government/drug-rehabilitation-decriminalisation-social-justice-ministry-ndps-act>.

discussions have tended to focus on centralized issues, overlooking challenges in porous border regions. According to the Universal Declaration of Human Rights (UDHR)⁺⁺⁺ and the 2019 International Guidelines on Human Rights and Drug Policy (HRDP Guidelines), every individual has the right to enjoy the highest possible standard of physical and mental health. This right extends to drug laws, policies, and practices. States must take tangible measures to ensure that drug-related and other healthcare facilities are available to all individuals in an impartial manner and in sufficient quantity, ensuring accessibility for everyone. States should also consider medical ethics, cultural norms, age, gender, and the communities being served while providing high-quality services. Access to drug treatment should be in line with global standards, offering voluntary and evidence-based care, along with community support. Additionally, states must prevent the arbitrary detention of individuals who use drugs.

In summary, the NDPS Act's failure to effectively tackle rehabilitation, along with structural flaws and misapplication, strains the criminal justice system. Reforming the Act is essential for substantive improvements in criminal justice procedures.

Conclusion

The concept that "the drug should also be aware regarding protection of the basic human rights of the accused" implies a metaphorical understanding where not only law enforcement and judicial authorities but also the broader systems and policies surrounding drug enforcement should acknowledge and uphold the basic human rights of those accused of drug-related offenses.

Drug-related crimes pose intricate legal, social, and ethical dilemmas, necessitating the utmost protection of human rights within this framework. Despite allegations of involvement in drug-related activities, accused individuals are entitled to fundamental human rights guaranteed by international instruments such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). Primarily, ensuring a fair trial is paramount in any legal system, irrespective of the alleged offense. This encompasses rights such as legal representation, the presumption of innocence until proven guilty, and access to a timely and impartial trial. It is imperative that drug enforcement authorities uphold these rights throughout legal proceedings.

Moreover, the absolute prohibition of torture and other forms of cruel, inhuman, or degrading treatment is a foundational human rights principle. Despite the severity of drug offenses, accused individuals should never be subjected to torture or mistreatment during interrogation or while in custody. Law enforcement agencies must rigorously adhere to these principles without exception. Similarly, safeguarding the right to privacy is crucial, especially in drug enforcement operations involving searches, seizures, and surveillance. Authorities must strictly adhere to legal standards and procedures to protect individuals' privacy rights, ensuring that such actions are carried out lawfully and with full respect for the dignity of the accused.

Additionally, ensuring access to healthcare services, particularly for individuals struggling with drug addiction and substance abuse, is vital. Accused individuals should be provided with comprehensive healthcare services, including treatment and rehabilitation programs, recognizing that punitive measures alone are insufficient to address the complexities of drug abuse and addiction.

In essence, the assertion that "the drug should also be aware regarding protection of the basic human rights of the accused" underscores the imperative of upholding human rights principles throughout drug enforcement activities. Regardless of the allegations, accused individuals are entitled to fundamental rights and protections under the law. It is incumbent upon drug enforcement authorities to recognize and uphold these rights at every stage of the legal process, fostering fairness, dignity, and justice for all involved parties.

Comparative Analysis of Drug Laws of Different Countries

United Kingdom

Until 1964, the management of drug-dependent individuals in the medical field was distinct from the legal repercussions associated with unregulated drug use and distribution in the United Kingdom. During this period, drug usage remained relatively low, with limited recreational use and a small number of dependent users who received prescribed medications as part of their treatment regimen. The approach to drug regulation shifted in the 1960s, with a decrease in criminalization and the continuation of a framework established by the Misuse of Drugs Act.

Between 1916 and 1928, concerns arose regarding drug use among soldiers on leave from the First World War and

⁺⁺⁺ UN Development Programme, International Guidelines on Human Rights and Drug Policy, 7pt. 1, (March 2019)

individuals associated with criminal activities in London. This led to the implementation of controls on the distribution and use of drugs like morphine, cocaine, and later cannabis. Despite criminalization, these substances remained accessible to addicts through medical channels, a system known as the "British system," as affirmed by the Rolleston Committee report in 1926^{###}. This approach, characterized by medical oversight of licit opioid distribution and regulation of illicit supplies, persisted in Britain for nearly forty years, known as the Rolleston Era.

Legal developments from 1925 to 1964 were primarily driven by international pressures rather than domestic issues. The introduction of the Single Convention on Narcotic Drugs in 1961 aimed to globally regulate drug trade and use, prohibiting countries from treating addicts with illegal substances except for scientific and medical purposes.

Under pressure from the United States, the UK enacted the Drugs (Prevention of Misuse) Act in 1964, introducing criminal penalties for possession of small quantities of drugs and granting police the authority to conduct stop and search operations for illegal substances. The Misuse of Drugs Act of 1971 continued these measures, classifying drugs into categories A, B, and C, with increased penalties for trafficking and supply in the following decades. In 1991, a new phase of UK drug legislation began with efforts to integrate health and criminal justice responses through Probation Orders. This marked a departure from the previous separation between medical and punitive approaches under the British system.

Classification Of Drugs and Psychotropic Substance

Drugs are categorized into three classes based on their perceived danger and societal impact, rather than solely focusing on individual effects. It's important to recognize that different drugs can affect individuals differently. All drugs, regardless of class, posesignificant dangers.

The three drug classes are Class A, Class B, and Class C:

- Class A drugs include heroin, cocaine, ecstasy, and LSD.
- Class B drugs encompass substances like speed, cannabis, ketamine, mephedrone, and certain amphetamines.
- Class C drugs consist of anabolic steroids, GHB, and certain tranquilizers.

Temporary Class Drug Banning Orders are applied to psychoactive substances, often referred to as "legal highs." These substances undergo rapid chemical changes, making their composition unpredictable. Temporary banning orders are implemented to prohibit these substances until thorough analysis can assess their potential risks to human health. It constitutes an offense to manufacture, distribute, or offer to distribute any substance with psychoactive properties, if it is intended for its psychoactive effects.

Nicotine, alcohol, caffeine, and alkyl nitrites, commonly known as "Poppers," are excluded from the classification of psychoactive substances. Additionally, medications regulated by the Human Medicines Regulations (2012) and drugs controlled under the Misuse of Drugs Act (1971) do not fall under the definition of psychoactive substances. Possession of a psychoactive substance within a custodial institution, such as a prison or young offender center, is considered an offense.

Importing psychoactive substances, including purchasing them from non-UK-based websites, can result in prosecution. Possessing a psychoactive substance with the intent to distribute, distributing or offering to distribute, manufacturing, importing, or exporting may lead to penalties ranging from fines to imprisonment for up to six months or seven years. Offenses involving psychoactive substances may be deemed aggravated if they involve supplying to individuals under 18, occur in proximity to schools or children's homes.

Punishment For Possession or Supplying Or Dealing

Individuals with prior drug offenses found in possession of Class A or B drugs will face prosecution. The maximum penalties for possession of each drug class are as follows:

- Possession of a Class A drug can result in a maximum sentence of up to seven years in prison, an unlimited fine, or both.
- Possession of a Class B drug may lead to a maximum sentence of up to five years in prison, an unlimited fine, or both.
- Possession of a Class C drug carries a maximum sentence of up to two years in prison, an unlimited fine, or both.

Penalties can be heightened if the individual is involved in drug dealing or supplying, even if the exchange involves only

^{###} Reuter, Peter; Stevens, Alex (2007). "An Analysis of UK Drug Policy" (PDF). London: United Kingdom Drug Policy Commission

friends without any monetary transactions.^{§§§§} Supplying drugs extends beyond traditional drug dealing and can include sharing drugs with friends. Suspicions of drug sharing can lead to charges. If suspected of supplying drugs, individuals are likely to face prosecution. The quantity of drugs in possession and prior criminal history are factors considered in determining the severity of punishment. The maximum penalties for intent to supply drugs are:

- Up to life imprisonment, an unlimited fine, or both, for a Class A drug.
- Up to 14 years in prison, an unlimited fine, or both, for a Class B or Class C drug.

Drug	Punishment for Possession	Punishment for Supply
Class a	7 years + fine	Life sentence + fine
Class b	5 years + fine	14 years + fine
Class c	2 years + fine	14 years + fine

Source : *Misuse Of Drugs Act , 1971 Of United Kingdom*

Maximum sentences vary depending on the nature of the offense, with lesser penalties for possession and harsher penalties for trafficking, production, or allowing premises to be used for drug-related activities. The severity of the punishment also depends on the perceived harm of the drug involved.

Less serious offenses are typically handled by magistrates' courts, where sentences are capped at six months' imprisonment and/or a £5,000 fine, or three months' imprisonment and/or a fine. The majority of drug offenders are charged with unlawful possession. Despite the severity of maximum penalties, only about one in five individuals convicted of possession receive a custodial sentence, and even fewer are actually incarcerated. Additionally, the majority of fines imposed are £50 or less.^{*****}

United States Of America

The misuse of drugs and alcohol presents significant social challenges, both in India and the United States. While the exact origins of non-medical drug use are unclear, these substances can provide pleasure and benefits when used responsibly but become harmful when abused. Efforts to regulate drug use throughout history reflect attempts to address its negative impacts. Notably, the United States implemented extensive prohibition measures, beginning with legislation targeting Chinese opium in 1875 and culminating in the Harrison Act of 1914, aligning with international efforts against opium, morphine, and cocaine abuse. Following World War II, the Narcotic Control Act of 1970 imposed severe penalties for drug-related offenses. A significant shift occurred in 1960 towards prioritizing treatment and rehabilitation for alcohol and drug addiction, marking a new approach in governmental strategy.

Drug Court In USA

The United States has established specialized problem-solving courts known as Drug Courts to address cases involving individuals with substance abuse issues. These courts, now numbering over 1200 in operation and with more than 470 in the planning stages nationwide, have garnered significant public support. Often hailed as a novel approach to justice, Drug Courts aim to assist offenders with drug or alcohol problems through judicial intervention.

A Drug Court operates with a distinct focus on less severe drug-related offenses, employing a combination of supervision and treatment programs. These initiatives typically involve regular drug testing, oversight from both judicial and professional authorities, drug counseling, access to treatment, educational opportunities, and the use of rewards and sanctions. Drug Treatment Courts approach substance abuse as a chronic, progressive, and relapsing disorder, emphasizing therapeutic interventions over strict punishment. Judges in these courts may consider reducing or dismissing sentences upon successful completion of treatment programs, recognizing addiction as a medical condition rather than solely criminal behavior.

In such proceedings, key participants include the clients themselves and the judge, who adopts a proactive therapeutic role in their interactions with clients. Within Drug Treatment Courts, the judge assumes a leadership position within the multidisciplinary team assembled to address the individual's needs.

Conclusion

In the present Research an attempt have been taken to research the "Critical Analysis Of The NDPS Act In Light Of Human Rights Perspective ". Very few Endeavours have been taken in this regard. In recent time our country, India is facing a huge problem of illicit use of drugs, drug trafficking, personal consumption etc. Hence the above discussed law Narcotic Drugs and

^{§§§§} 'Northern Ireland Direct' (accessed April 17, 2024), available at: <https://www.nidirect.gov.uk/articles/drugs-and-crime>.

^{*****} 'DrugWise' (accessed April 17, 2024), available at: <https://www.drugwise.org.uk/what-are-the-uk-drug-laws/>.

Psychotropic Substances Act of 1985 was enacted to curb the menace. It provides stringent punishment as well as enhanced punishment including capital punishment for different kinds of offences and contraventions of Narcotic Drugs and Psychotropic Substances. But however this law does not follow the generic criminal law jurisprudence of Burden of proof on prosecution, rather it follows the principal of shifting onus and the "bail is the rule jail is the exception" is even not followed in this law. It follows the opposite of the jail being the rule and bail being the exception. Thus it causes a deplorable plight for the first time offenders, small quantity offenders as being the undertrials.

Suggestions

Shifting Of Focus On Rehabilitation From Deterrence

The implementation of the NDPS Act has largely adopted a uniform approach, treating both drug users and other violators alike. While the Act acknowledges the need for addressing addiction, the penalties for drug users, though less severe, still reflect a punitive stance. This highlights the punitive nature of the legislation, where drug users often face unfair treatment due to case backlogs and are equated with other offenders.

Referring section 64A of the Act:

"Immunity from prosecution to addicts volunteering for treatment: Any addict, who is charged with an offence punishable under section 27 or with offences involving small quantity of narcotic drugs or psychotropic substances, who voluntarily seeks to undergo medical treatment for deaddiction from a hospital or an institution maintained or recognised by the Government or a local authority and undergoes such treatment shall not be liable to prosecution under section 27 or under any other section for offences involving small quantity of narcotic drugs or psychotropic substances: - Provided that the said immunity from prosecution may be withdrawn if the addict does not undergo the complete treatment for de-addiction".

Reports from reputable institutions like the Vidhi Centre for Legal Policy indicate that the provisions intended for treatment and rehabilitation, as outlined in sections 39 and 64A of the NDPS Act, are seldom utilized. The terminology used in the Act, such as "consumer," "personal use," "possession," and "use," lacks clarity and fails to differentiate the culpability of individuals. Rehabilitation initiatives for drug addiction have been historically neglected in India, resulting in addicts being treated similarly to offenders without proper distinction.

To address this gap, there is a pressing need to expand treatment and rehabilitation services for substance use disorders. Instead of solely relying on punitive measures, the focus should shift towards providing medical treatment and rehabilitation for drug users. Rehabilitation should be prioritized for addicts, with punitive measures reserved for cases involving trafficking, manufacturing, and commercial use.

It is essential to alter the perception of drug users from offenders to victims, emphasizing the need for empathy and support rather than punishment. However, due to lack of awareness among users, inadequate training of officials, and inconsistent investigation procedures, users often encounter unnecessary challenges. The stigma associated with drug dependence in India, coupled with substandard conditions in treatment and rehabilitation centers, discourages individuals from seeking help. A preferable approach would involve sending drug users to rehabilitation centers under medical supervision, with minimal police involvement. Access to drugs like methadone, permitted under the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2014, should be readily available to all users. Individuals involved in drug selling solely to sustain their addiction should be viewed as victims rather than criminals, aiming to address the root causes of addiction rather than solely focusing on punishment.

Adopting Reformatory Approach Towards Addicts To Curb Drug Abuse

Another recommendation is advocating for a reformatory and compassionate approach, citing Portugal as a successful example. Portugal's decriminalization of personal drug use, coupled with a reformatory strategy for addicts, effectively curbed drug abuse and trafficking, leading to widespread rehabilitation. This shift towards a more humane approach yielded positive outcomes.

The researcher critiques the NDPS Act's treatment of drug addicts as criminals, overlooking their victimhood. There's a call for a change in perspective towards individuals involved in drug-related offenses, particularly those dealing with small quantities, viewing them as victims rather than criminals. Socio-cultural factors such as poverty, depression, urbanization, and stress contribute to the prevalence of drug use, warranting a compassionate response.

Given the global trend towards rehabilitative approaches for addicts, the researcher questions why India should not follow suit. Mere amendments to the NDPS Act are deemed insufficient. Instead, a comprehensive reform is needed, including early detection, psychiatric treatment, and comprehensive rehabilitation programs. Improving medical infrastructure and offering

alternatives to imprisonment are crucial steps.

The report 'Magnitude of Substance in India' 2019 underscores the inadequate access to medical help for individuals with alcohol and drug dependence, with only a quarter receiving assistance. Individualized treatment and community involvement are emphasized, along with the necessity for police training and a more compassionate approach towards addicts. Enhanced utilization of evidence-based methods in NDPS cases, coupled with accessible treatment for substance use disorders, is advocated.⁺⁺⁺⁺

Conclusion

Minimizing the Incarceration Period For Undertrials

According to the World Drug Report of 2017, individuals using drugs often continue their drug use while incarcerated, and some prisoners may even begin using drugs while in prison.⁺⁺⁺⁺ In line with the principle that "Liberty is the rule, to which detention must be the exception," the Human Rights and Drugs Policy (HRDP) guidelines mandate that member States ensure pre-trial detention is never mandatory for those charged with drug-related offenses^{§§§§§}. Detention should only occur in exceptional circumstances, where it is reasonable, necessary, and proportionate. Moreover, individuals should not be detained solely based on drug use or dependence; they have the right to a fair trial, derived from the right to equality.

The government should explore alternatives to imprisonment, as recommended by the United Nations Office on Drugs and Crime (UNODC) in its handbook on alternatives to imprisonment. These alternatives should respect the judicial process while minimizing interference with liberty and human rights. Pre-trial detention can have detrimental effects on innocent individuals or victims of drug addiction.

In adopting a rehabilitative approach towards addicts and victims, it would be pertinent to consider the "*Tokyo Rules*", which advocate for non-custodial measures in line with the principle of minimum intervention. These rules suggest employing alternatives to detention as early as possible and list various dispositions that serve as alternatives to imprisonment at the sentencing stage. These dispositions, if well-defined and implemented, can have an appropriate punitive effect. They include

- verbal sanctions
- conditional discharges
- status penalties
- economic sanctions
- restitution to victims
- suspended sentences
- probation
- community service
- referral to attendance centres
- house arrest, and
- other non-institutional treatments or combinations thereof.^{*****}

Similarly, specific non-custodial sentences such as verbal sanctions, conditional discharges, status and economic penalties, as proposed by the UNODC, warrant sincere consideration by governments and other stakeholders.⁺⁺⁺⁺

⁺⁺⁺⁺ Ambekar, A., Agrawal, A., Rao, R., Mishra, A. K., Khandelwal, S. K., Chadda, R. K., & Ministry of Social Justice and Empowerment Government of India, *Magnitude of Substance Use in India*, 1, 38, (2019),

⁺⁺⁺⁺ United Nations Office on Drugs and Crime, *World drug report 2017* (United Nations publication, 2017)

^{§§§§§} UN Development Programme, *International Guidelines on Human Rights and Drug Policy*, 13pt.7

^{*****} United Nations Office on Drugs and Crime, 'Tokyo Rules' (accessed April 17, 2024), available at: <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/tokyorules.pdf>.

⁺⁺⁺⁺⁺ United Nations Office on Drugs and Crime, available at: <https://www.unodc.org/>.