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THE CONGRUITY OF LAWS GOVERNING NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES IN INDIA AND THE WAY FORWARD

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Abstract

Narcotic drugs and substance abuse have been considered a menace across the world for many decades. The world saw drug addiction or substance abuse as a crime rather than as a medical-legal challenge faced by individuals. However, in the last few years, this perception seems to have transformed from a punitive approach to a reformatory and rehabilitative approach.

Most surveys suggest that drug use peaks amongst the age group of 18-25 years. Surveys also indicate a high rate of initiation of drug use amongst adolescents. The importance of the issue is manifest from the fact that 50% of the Indian population is below the age of 25 years and around 65% is below the age of 35 years, and it is expected that the average age of the Indian population would be 29 years by the year 2020.

In this paper, the authors have attempted to trace the journey of the NDPS Act and shed light on the issues such as lack of rehabilitation and pendency, which have marred the success of the Act. This paper seeks to analyse the drug laws of India which were enacted to deal with the menace of drug abuse as well as to fulfil its international obligations. Simultaneously, the authors have attempted to bring forth the key factors which seem to have shattered the intent and objectives behind this piece of legislation. The authors have weighed the Act against International Conventions and tried to test its congruity with the rehabilitative approach. Relying on various reports, domestic and global judicial developments and other reliable sources, the authors have attempted to bring forth the challenges which are being faced in dealing with the matters relating to narcotic drugs and substance abuse under the NDPS Act and other ancillary laws and provide some suggestions thereon.

Keywords: Narcotic Drugs, substance use disorder, rehabilitation, drug laws, deterrence, reform.

INTRODUCTION

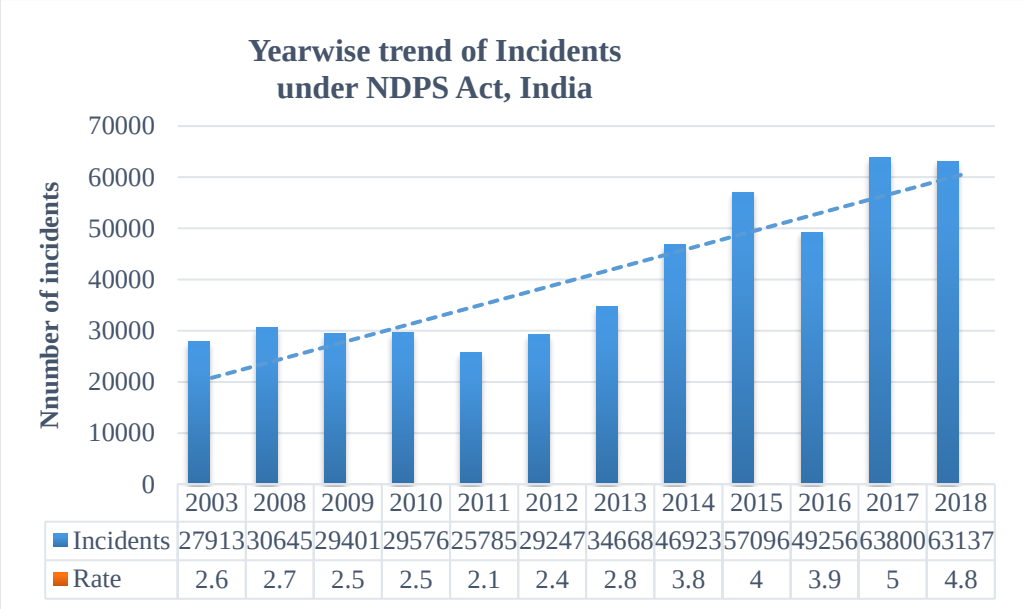
The Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the "NDPS Act") – is the primary law to combat drug trafficking in India. The NDPS Act created a regime of "prohibition, control and deterrence". The Act was passed with the intent to fulfil India's obligations and commitments under various International Conventions towards eradicating the drug abuse problem in the country.

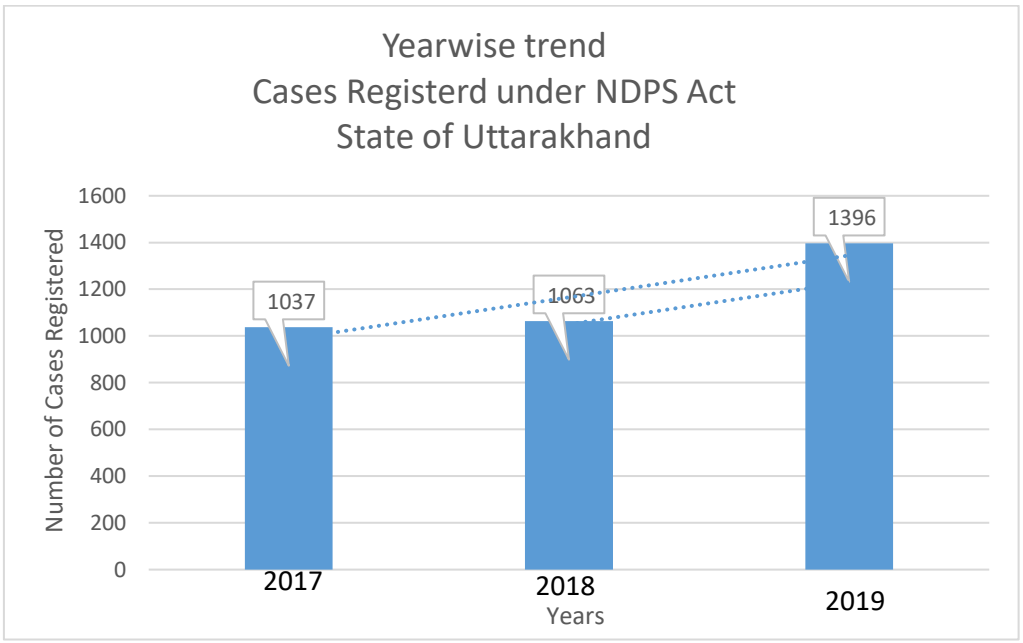
The NDPS Act was a result of pressing circumstances which demanded an Act to regulate the menace of drug trafficking in India. The urgency was established when India was dragged into the drug-net by becoming an established transit country, and damage had already begun to ensue in the form of spill-over effects. It is then, that the Parliament passed the purportedly all-inclusive, NDPS Act, 1985.

The NDPS Act, prima facie criminalised consumption of drugs and entailed stringent punishments for drug traffickers, and included

provisions for rehabilitation of drug addicts. The legislature tried to differentiate traffickers and individual consumers, as there is potential to transform victim/consumers by means of rehabilitation.

However, the punitive approach followed by the Indian Parliament seems to fail and the same is evident from the consistent increase in the number of cases registered under the Indian NDPS Act, 1985 despite high conviction rates. In the year 2014, total 46,923 cases were registered under the NDPS Act, an increase of 35.3% from the previous year (34,668 cases). A trend analysis of past 10-year and 5-year shows a 70.0% rise in the number of cases register in the year 2004 and 57.8% rise from the average of the five years (2009-2013) . The scenario has not changed even after various amendments including the recent amendment in the year 2014 and the cases registered under the Act continue to rise. The same is evident from the 'Crime in India' reports of the year 2016, 17 and 18 published by the National Crime Records Bureau (NCRB) which reveal a similar trend as depicted in graphical form below:





The data collected by the authors of the State of Uttarakhand mirrors the nation-wide trend. The number of cases registered under the NDPS Act has been consistently increasing since the enactment of the Act despite having stringent penalties and punishments. For instance, in the

State of Uttarakhand (India) in the year 2017, there were 1037 cases registered, the following year 1063, and in the year 2019, 1396 cases were registered under the NDPS Act.

Similarly, two nation-wide surveys conducted by the Ministry of Social Justice and Empowerment published in the year 2004 and 2019 suggest that drug use in India has continued to grow unabated. The overall opioid use has increased from 0.7 percent to nearly 2 percent and in numbers from 2 million to around 22 million. An even more disturbing discovery was that heroin has replaced the natural opioids as the most widely abused opioid. Even a thorough epidemiological study conducted in the State of Punjab showed a major increase in the use of synthetic drugs like cocaine . The survey suggested a need for strengthening the existing mechanism and making a sincere effort to fix the loopholes in the existing structure.

The aforementioned National and State level data depict the consistent rise in the number of cases under the NDPS Act, despite the stringent punishments provided in the existing law. Though there has been a series of amendments, the accused continue to face the odds, as there is a high rate of pendency of trials under the NDPS Act , which has led to many individuals spending more time behind the bars than they would have if they had been otherwise convicted. Especially in the states, which before the introduction of the Act, were severely struggling with drug menace and trafficking. Reports suggests that in the past few years in states like Haryana and Punjab the cases registered under NDPS have been rampantly increasing . As well as the arrests are on a record high. This trend shows that despite the intended deterrent nature of the Act, it is failing to taste success.

Therefore, in this paper, the authors have endeavoured to shed light on the treatment of the users, victims and drug peddlers, under the Indian drug laws. The existing statutory provisions and mechanisms fail to make a distinction between the accused who themselves are users, in contrast to accused who are only drug peddlers and intend to profit. The authors have also strived to trace the recent developments to examine whether the laws governing Narcotic Drugs and Psychotropic Substances in India, which have incorporated severe punishment and 'reverse onus' under certain provisions, have succeeded in achieving their legislative intent of rehabilitation and deterrence.

In this paper the authors have relied on various reports and data released by Indian Government, other countries and Independent national and International Organisations to examine the status of implementation of the NDPS Act, rehabilitation and use of alternatives to imprisonment for people using drugs. The authors also briefly discuss the status quo of the implementation of the NDPS Act vis-à-vis amendments and precedents and finally lay down emphasis upon the need for rehabilitation.

THE LEGISLATIVE BACKGROUND OF THE ACT

The NDPS Act was a result of a worldwide movement to control the supply of drugs widely known as the 'War on Drugs'. The movement gained prominence in the backdrop of the First Opium War during 1839–42. The same was followed by the International Opium Convention held in Shanghai in 1909, which subsequently acted as a stepping stone due to the participation of delegates from all over the world. The Convention undertook a declaration to regulate licit drugs and prohibit illegal smuggling of narcotics. The international drug control regime was further strengthened and remoulded by various treaties and laws which were later converted into a single document referred to as the 1961 Single Convention on Narcotic Drugs. After a decade in 1971, the Convention on Psychotropic Substances and later in 1988, United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances was reformulated which expanded the ambit of international drug prohibitions for regulating the use of psychotropic substances as well as controlling the illicit trafficking of drugs

In 1977, the 'Gopalan Committee' which was constituted by the Ministry of Health and Family Welfare, Government of India, observed that "the penal policy under the relevant laws is weak and hardly effective and the sentencing structure be immediately remodelled on priority basis." The Committee's recommendation also made a phenomenal impact. Although the Committee had felt the urgency of required changes in the sentencing structure in 1977, it took roughly seven-years to establish the NDPS Act.

The NDPS Act is a consolidated version of various drug laws existing at that time at the national level, for instance, the Dangerous Drugs Act, 1930 which was formulated based on various international conventions ratified by the Indian Government. However, the existing three 'drug laws' of India at that time remained disaggregated and finite. Given the international obligations, (United Nations, 1975) (United Nations, 1975) (United Nations, 1988) all these laws were consolidated into a single Act, i.e. the NDPS Act, Dangerous Drugs Act, 1930 on November 14, 1985. On August 23, 1985, the NDPS Bill was tabled before the Lok Sabha and within four days, i.e., on September 16, 1985, the Bill received the President's assent and, it came into force from November 14, 1985.

The bone of contention before the House was the issue of lenient provisions for addicts. The House was divided on the issue of punishment, and one side which was led by Member of Parliament, VS Krishna Iyer (Janata Party) advocated stringent punishment as a deterrence even for the offences concerning small quantities of drugs.

On similar lines, Shantaram Naik and members of the [Indian National Congress (INC)] vehemently supported mandatory penal provisions as the only way to control drug addiction effectively. Similarly, another member, Priya Ranjan Dasmunsi (INC), stated;

"minimal punishment for addicts would create a tradition of acceptance of drug use".

Moreover, he supported imprisonment for a minimum period of two years for the drug addicts. However, the Minister of State for Finance, Janardhan Poojary, tried to mitigate these concerns, stating that the law was not lenient towards anyone (even for addicts) unless the accused proved that the drug in possession was for self-use.

Several other MPs like Ajay Mushran (INC), raised concerns about the bill's provisions on rehabilitating and treating drug addicts. They pointed out that there was no mandatory obligation on the Government to establish treatment centres, and they criticised the lack of clarity about which the Ministry was responsible for establishing de-addiction centres. They asserted that it was the Government's duty to cure people of their addiction.

During the Amendment of NDPS Act in 1988, the treatment and rehabilitation of addicts also attracted attention. Jayanti Patnaik (INC) urged the Government to formulate an integrated prevention policy, with coordinated efforts between law enforcement and medical agencies. Members of Parliament in the Rajya Sabha such as Kamal Morarka [Janta Dal (Secular) JD (S)] and P.K. Kunjachen [Communist Party of India (Marxist) CPI (M)] clearly stated that the NDPS Act was mostly being used to penalise addicts who needed to be treated as victims and rehabilitated.

This research paper, therefore, analyses the nature and effect of the laws governing the Narcotic Drugs and Psychotropic Substances in India by understanding the developments which have ensued post-enactment of the NDPS Act, briefly shedding light on the issue of 'reverse onus', discussing the status quo of the implementation of the NDPS Act vis-à-vis amendments and precedents and finally laying down emphasis upon the need for rehabilitation.

POST- ENACTMENT DEVELOPMENTS

There have been various legislative developments since the NDPS Act came into force. The Ministry of Health constituted an Experts Committee in July 1994, for determining the scope of term "small quantity" of drugs under the NDPS Act, 1985, which submitted its report on March 24, 1995.

The said Committee recommended not to criminalise those consuming small quantities of drugs and instead urged upon the need for strengthening rehabilitative techniques and psychiatric methods for treatment of such addicts and consumers. The Committee discouraged issuing harsh punishments which might end up being counter-productive to the overall legislative intent behind the promulgation of the NPDS Act.

There have been reports that in the State of Punjab not even a single person was sent to a de-addiction centre or for rehabilitation by the Courts during 2013 and 2015 and interview with some judges and lawyers revealed that the provision of diverting addicts was widely unknown to the lawyers and practitioners. Though the NDPS Act endeavours to achieve two main objectives, i.e., deterrence and rehabilitation; however, there seems to be a contradiction in its application.

The Committee (Ministry of Health and Family Welfare, India, 1994) also observed that under the NDPS Act there is "unnecessary burden on the accused and leads to abuse by enforcement authorities". At this juncture, it is imperative to quote section 27 of the NDPS Act which provides as under:

"27. …consumption of drugs as mentioned in the Act is an offence and punishable with imprisonment of up to one year (in case of some drugs) or six months (in case of all other drugs)".

The Committee suggested that the Government should avoid determining the term 'small quantity' because there exists a wide variety of drugs and their usage amongst individuals which varies depending on their level of addiction, health, and financial capacity, as well as the nature of the drug.

Meanwhile, several research studies have also highlighted the existing disproportionality in the way the Act was being implemented as there were a high number of arrests involving small quantity or low-level drug users but there are rare cases which are referred for treatment and rehabilitation by the Courts. Additionally, due to judicial delays, many arrested on charges of drug abuse had to spend years waiting even for their case hearing to commence.

All these criticisms lead to a reassessment of the NDPS Act and consequently, suggestions towards further amendments to the Act. These criticisms resulted in the NDPS (Amendment) Bill, 2001, which came into existence with the intent to rationalise the penalty structure and to ensure that those involved in trafficking in significant quantities of drugs receive deterrent sentences of punishment while other addicts and those involved in comparatively less serious offences receive a lesser quantum of punishment.

The Bill was initially introduced in Rajya Sabha in the year 1998 to address the flaws in the NDPS Act like long incarceration of poor addicts, judicial delays and high pendency and investigating agencies failing to follow the procedural requirements. The 2001 Amendment Bill categorised the drugs into three categories, small, commercial and intermediate, and sought to punish the accused based upon their quantity. Additionally, another significant debate during the Amendment Bill was the removal of the higher degree of proof upon the accused under Section 27 in practice. There was a massive outcry from the political class who raised concerns that reducing the penalty would decrease the deterrent nature of the NDPS Act and in turn, harm the object and purpose of the NDPS Act. Earlier the Committee on Small Quantities had pointed out that the reverse burden of proof under S.27 lays an unnecessary burden on the accused which has led to abuse of the provision by the enforcement authorities. Therefore, the Committee suggested that instead of punishing addicts, the law should ensure compulsory treatment through a judicial order, and suitable facilities for treatment and rehabilitation should be provided.

A LOOK AT THE NATIONAL POLICY OF INDIA ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

As per the National Policy of India on Narcotics and Psychotropic substances. there are two main factors which lead to drug abuse firstly, the availability of drugs and secondly, the presence of psycho-social conditions which lead to their abuse. Therefore, there should be equal focus on supply and demand reduction as well. Demand reduction has also two main elements; one, treating the drug addicts and second, educating and creating awareness in the society to prevent addiction as well as rehabilitate those addicts who have received the required treatment. Hence, drug abuse is not just a demand and supply issue. Instead, it is a psycho-socio medical issue, that requires medical intervention as well as community-based interventions for treatment and rehabilitation of drug users.

As per the policy, the Government of India in the National policy has adopted a three-pronged strategy for demand reduction comprising:

- "Building awareness and educating people about ill-effects of drug abuse.
- Dealing with the addicts through programme of motivational counselling, treatment, follow-up and social-reintegration of recovered addicts.
- To impart drug abuse prevention/rehabilitation training to volunteers with a view to build up an educated cadre of service providers."

As aforementioned in the policy, treatment is the basic element of the strategy as it directly

focuses on drug addiction. India follows a two-prong strategy towards treatment (i) Government runs de-addiction centres in Government hospitals, and (ii) supports NGOs engaged in this field. The Indian Government also runs more than hundred de-addiction centres across the country in various Government hospitals.

In the year 1985-86, The Ministry of Social Justice & Empowerment brought a scheme for Prohibition and Drug Abuse. The Government of India supports over 361 (NGOs); 376 De-addiction-cum-Rehabilitation Centres, runs De-Addiction Camps, and also Counselling and Awareness Centres and for all these institutions and programmes, the Indian Government bears a major share of the expenditure for providing services in these Centres. (Department of Revenue, Ministry of Finance, 2017) The policy also obligates the Central Government to ensure that services like motivational counselling, treatment, and rehabilitation are easily accessible and are provided by the Government through its own institutions or other independent institutions like NGOs.

There should be appropriate participation of the "National Consultative Committee on De-addiction and Rehabilitation" in matters related to prevention, de-addiction, rehabilitation and harm reduction.

The States should also remove the age restrictions for accessing harm reduction services; in fact, it should be in the best interest of every individual in question. Special provisions are necessary for child drug users focussing on child-sensitive prevention and treatment, drug dependence and harm reduction services. The States should not criminalise children involved in possession of drugs for their personal use and prioritise rehabilitation over punishment.

In India, the States seem to ignore rehabilitation of those involved in the cases under the NDPS Act. Instead, they are thrown under the wheels of justice due to which the chances of them returning to normalcy are negligible. The number of cases under the NDPS Act has been consistently increasing, which raises questions whether the Government has been able to fulfil the three-prong objectives of the Act.

The facilities and access to rehabilitation and medical treatment for drug addiction seem limited. The reports suggest that Indian states have been spending a minimal amount of funds for the rehabilitation and even the existing rehab centres and de-addiction centres are overcrowded or facing a fund crunch. Instead of considering drug addicts as a patient or a victim, the draconian policing system and the indifferent government bodies treat them as criminals or a threat to society. There is an imminent need for change in this approach.

The authors are of the view that it is must that individuals are treated on a case to case basis. There cannot be a straight-jacketed formula for rehabilitating or treating any drug addict or offenders. In India, we need to find alternatives to punishment, like Brazil and Portugal. There is an imminent need for infrastructural upheaval in the form of dedicated rehabilitation centres focussing on specific vulnerable groups like children, mothers of infant children, orphans, gender minority, and other socio-economically weak sections. The law must consider mitigating factors and deal with each matter on a case to case basis instead of having one size fits all approach.

SHORTCOMINGS IN THE INDIAN NARCOTIC LAWS

THE APPLICATION OF REVERSE ONUS

The Human Rights Development Programme, (HRDP) guidelines state "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." They shall have the right to free trial, and it is drawn from the right to equality.

The International Covenant on Civil and Political Rights (ICCPR) also clearly considers every person to have a "right to be presumed innocent until guilty" and given a fair trial.

The report submitted by the High Commissioner for Human Rights (HCHR) to the Human Rights Council, highlighted with some examples of what may lead to human rights violation in a criminal justice system by reversing the burden of proof in criminal proceedings against persons in possession of drugs exceeding the specified thresholds, or possessing keys to a building or

vehicle where such drugs were found, is presumed to be guilty of drug trafficking.

Still, there are many provisions where we find reverse onus clauses being upheld by the Indian Judiciary. Under the NDPS Act, there are two provisions which employ reverse-burden clauses. First, Section 54 which, carries a presumption that an accused is guilty of an offence if he/she fails to "satisfactorily account" for possession of the contraband. Further, Section 35 provides for a presumption of 'culpable mental state' in prosecutions against the accused. For a significant amount of time, this presumption has been strictly applied, which has led to the imposition of disproportionate punishments upon the accused. This has been a constant cause of concern for the Human Rights Organisations.

The Hon'ble Supreme Court of India went down through various judgments outlining that prosecution must prove the 'initial facts'. For instance, if the contraband in question was in the 'conscious possession' of the accused then, it creates a presumption of guilt. This shifts the burden back to the accused to rebut this presumption. It is pertinent to note, that in practice, the prosecution is not required to prove that the accused was knowingly in possession of the contraband itself instead they just prove that there was physical possession of contraband. This burdens the accused who needs to prove that he did not have the knowledge of such possession.

 STANDARD OPERATING PROCEDURES VIS A VIS TESTING PROCESS

The Apex Court of India at various instances expressed its concern over the implementation of the NDPS Act and taking cognisance of the prevailing conditions issued notices to all States and to ameliorate the state of trials pending under the NDPS Act, it issued specific directions and guidelines to all the States for dealing with the trials under the NDPS Act. It also strongly cautioned the subordinate Courts against lavishly granting adjournments during the trial . Moreover, the Court directed all the States to establish Special Courts for exclusively dealing with the matters relating to the NDPS Act.

The Hon'ble Supreme Court of India strongly emphasised the need for establishing more Central Forensic Science Laboratories (CFSL), to cater to the increasing demand for tests across the country. The Court directed each State to establish State level and regional level laboratories which focus on dealing with NDPS matters. The existing laboratories give preference to rape cases and dowry cases due to which there are delays in dealing with the matters related to NDPS.

The same concern was highlighted by the Court in (Achint Navinbhai Patel v. State of Gujarat & Anr, 2003.) observing that: "it has been repeatedly stressed that NDPS cases should be tried as early as possible because in such cases normally accused are not released on bail."

One of the causes for pendency is the delayed forensic reports which is primarily due to lack of infrastructure or due to other procedural delays by the investigating authorities. Further, there is a need for a national level uniform Standard Operating Procedure (SOP) to deal with the matters pertaining to the NDPS Act. For instance, the SOP released by J&K Government, India, in the year 2017 clearly shows that the government's approach is to treat all accused under the NDPS Act as criminals, rather than as victims or patients.

 RE-TESTING MECHANISM

The applications for re-testing makes the conditions worse. Though the Act does not prescribe for re-testing, still the applications for re-testing and re-sampling are being regularly entertained by the NDPS Courts.

The Apex Court, in the case of Thana Singh , observed that: "These 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."

There have been a large number of applications for re-testing which have further increased the already overburdened laboratories. Though, the Hon'ble Supreme Court held that the NDPS Act does not permit re-sampling or re-testing of samples unless there are exceptional circumstances.

The Hon`ble Supreme Court also opined that "under the NDPS Act, re-testing and re-

sampling was rampant at every stage of the trial contrary to other legislations, which defined a specific time frame within which the right might be available. In light of Section 52-A of the NDPS Act, which permitted swift disposal of some hazardous substances, the time frame within which any application for re-testing might be permitted ought to be strictly defined."

The Hon'ble Court also directed the States to appoint nodal officers to monitor the progress of trials and ensure that there is no unreasonable delay on account of non-availability of witnesses or documents.

 THE APPLE OF DISCORD - QUANTITY OR QUALITY

There has been a long debate over determining the quantity of drug based on which an accused should be prosecuted. It is pertinent to note that access to controlled substances as medicines is an essential element of the right to health. Along with these significant developments, many palliative care groups raised concerns about the need for essential pain medicines like morphine and other opiates. The Act permitted the medical use of some narcotic drugs, however severe penalties dis-incentivised hospitals and pharmacies from stocking them.

In the year 2008, the Hon'ble Supreme Court of India passed a landmark judgement in relation to the quantity of drugs involved in the NDPS cases. In E. Micheal Raj v. Intelligence Officer, Narcotics Control Bureau, 2008, the Hon'ble Court held that:

"The rate of purity of the drug is decisive for determining the quantum of sentence – for small, intermediary or commercial quantity."

However, soon after this judgment of the Hon'ble Supreme Court, the Department of Revenue of Government of India in the year 2009 issued a contrary notification which proposed punishment of the accused under the NPDS Act to be based on the weight of the whole drug found in their possession, and not just the pure content of such drug. (Ministry of Finance (Department of Revenue), 2009.) The Government notification posed a conflicting position between the judiciary and the legislature which created a dilemma before the judiciary too while adjudicating the matters under the NDPS Act.

Recently the Hon'ble Supreme Court of India in the matter of (Hira Singh v. Union of India, 2020, held that:

"…while assessing the quantity of contraband from a mixture that is seized and also contains neutral substances, the quantity of such neutral substances shall also be taken into account."

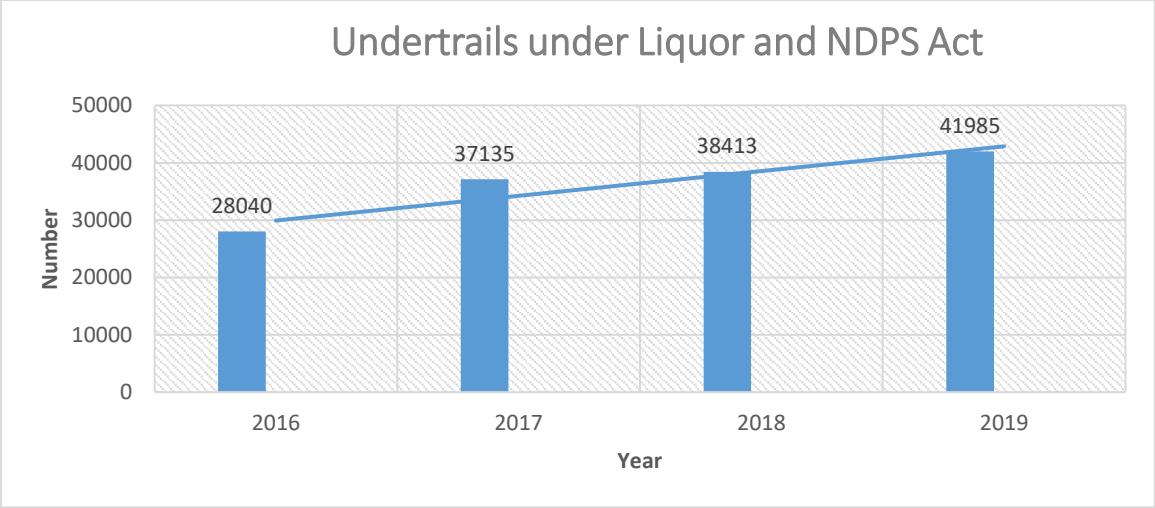
The judgment of Hira Singh has again shifted the approach of deciding the quantity involved in the matters under the NDPS Act. Quantity seized or involved in any case under the NDPS Act plays a key role as the severity of punishment highly varies depending on quantity. Another significant development was the case of Indian Harm Reduction Network v. Union of India, 2012, before the Bombay High Court where it read down the provision of the mandatory death penalty under section 31A to be a discretionary death sentence. The Court found Section 31-A violative of Article 21, (Indian Constitution art. 21, 1950.) and hence, not sustainable. The Court further held that:

"instead of declaring Section 31-A as unconstitutional, and void ab initio, we accede to the alternative argument of the respondents that the said provision be construed as directory by reading down the expression 'shall be punishable with death' as 'may be punishable with death' in relation to the offences covered under Section 31-A of the Act."

 PUNISHMENT AND DETERRENCE – INTERNATIONAL STANDARDS AND INDIAN SCENARIO

Post Amendments, the minimum punishment under the NDPS Act was reduced to six months. (Narcotic Drugs and Psychotropic Substances Act, 1985 §.15, 17, 18 and 20-23, 1985.) The NDPS Act provides for strict punishment for offenders and imposes stricter punishment for the repeat offenders, which may extend to the death penalty. However, the NDPS Act does not stipulate a clear distinction between minor offenders and grave offenders. The discretion to decide the same lies with the Courts based on the gravity of the offence. The Amendment Act of 2001, for the first time provided for graded sentences concerning offences related to narcotic drugs, and it also prescribed a higher threshold for minimum punishment after the Amendment. It is important to note that the Apex Court of India upheld the constitutionality of the same.

The number of under-trials under the NDPS Act has been increasing every year, which is evident from the report titled 'Prison Statistics India' (PSI) published annually. The same has been highlighted through the following bar graph which is based on the PSI data of the years 2016-19. Due to the present punitive approach of the Indian Justice System, a large number of people with illicit drug use disorders involved in small quantity are compelled to stay in overcrowded jails and face long incarceration due to pendency of trials.



NATURAL LAW AND PHILOSPHY

There are different theories on punishment; Philosophers have mainly advanced two contrasting positions to justify punishment, namely utilitarian and retributivist. The utilitarian model is of the view that punishment is at best, evil, and the right to punish may only be derived based on its useful consequences. The punishment can be only justified when, in its absence, there would be more distress in society. Jeremy Bentham advanced the classic eighteenth-century case for the utilitarian model in his work "An Introduction to the Principles of Morals and Legislation" (1789). Bentham applied the term 'mischief' not only to crimes but to punishments as well. He contended that punishment 'ought only to be admitted in as long as it excludes some greater evil'. For instance, the greater evil will be the increase in the volume of crimes committed in the absence of punishment.

A contrasting justification for punishment is embodied in the retributivist position. They regard punishment justifiable, not based on consequential utility, instead, on the grounds of the commensurate desert. There are several varieties of the retributivist position, but in essence, retributivism is a justice-oriented position. Retributivism position asserts that criminals ought to be punished for their actions, even if there is no deterrence on others. The intended purpose of the punishment is to maintain the moral balance by making individuals payback for the crimes committed by them. If deterrence ensues from punishment, so much the better, but deterrence cannot justify punishment.

Similarly, in the eighteenth century, Immanuel Kant, cogently defended the retributivist philosophy of punishment. He strenuously questioned all utilitarian theories and claimed that utilitarian theories improperly consider men merely as means towards ends rather than as ends in themselves.

Another great scholar, Montesquieu, merged the utilitarian and retributivist philosophy in his work "The Spirit of Laws" . He firmly believed that the idea of punishment could achieve, both utilitarian and retributivist goals at the same time. Furthermore, he added a robust liberal orientation to his philosophy of punishment, contending that any justifiable system of punishments must ensure the maximum extent of liberty possible by criminalising just those acts which threaten any person or property or public peace and order, by protecting the rights of the accused, and by moderating punishments so that they match the degree of deterrence.

Similarly, Rawls in "A Theory of Justice and the Dewey Lectures", and in his other works follows the idea of 'Justice as Fairness'. Justice as Fairness speaks of a social contract, but he does not suppose that society is based on an actual contract, not even a tacit on, but a hypothetical, or, to be more precise, notional one. He describes an imaginary, idealised society that he calls a well-ordered society. People in the well-ordered society have a strong sense of justice and (almost) always do what they believe justice demands and he refers it as full compliance. Though, each has interests of his/her own that often conflict with the interests of the others, and each is willing to pursue these interests, even at the expense of others, to the extent that justice allows. The members' common conception of justice, however, and their readiness to honour its demands allow all disputes to be peacefully resolved.

According to the Hobbesian theory, since individuals desired greater security, they had willingly alienated to State authorities some of their rights and have got some obligations, even the right to punish transgressors of the law, to the extent that the goals of such alienation were peace and order.

In this way, the justifications for giving the State right to punish appears to be utilitarian. This leads to an interesting perspective as our emphasis on rights and duties of individuals which flows from the social contract, sets the philosophical scene for a retributivist justification to punishment. The individuals who fail to perform their duty to abide by the terms of the contract and obey the laws passed by the sovereign authority may be thought to deserve whatever punishment the law dictates. So, in case of breach of the contract, the culprit can be compelled to obey his own will when is found guilty for an act which violates the terms of the agreement. Similarly, in Locke's social contract theory people have given their rights to the State whose responsibility is to maintain the social order and punish those violating the social order.

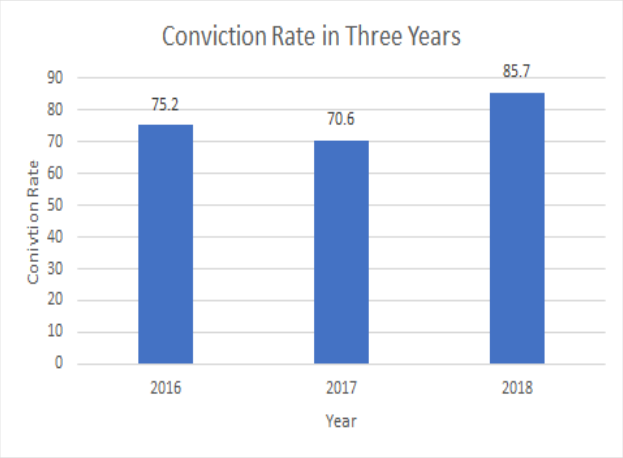
In reality, no legislation defines the term 'punish or crime'. Instead, different laws punish different types of acts labelling certain action or inaction as an offence, punishable under the law enacted by the authority. The courts do not follow a specific definition for the term punish and crime. The term 'punish' as defined by the Cambridge dictionary "to cause someone who has done something wrong or committed a crime to suffer, by hurting them, forcing them to pay money, sending them to prison, etc."

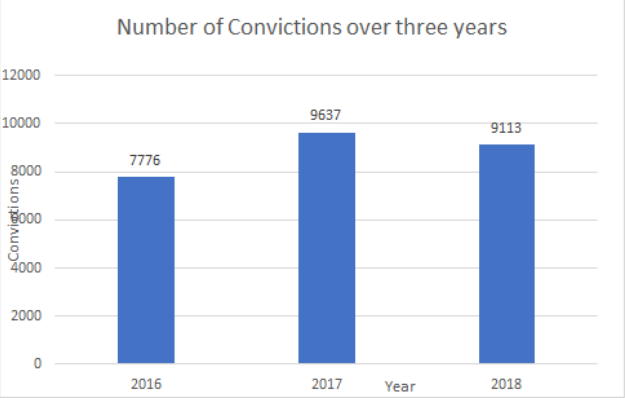
INDIAN PUNISHMENT REGIME

India has followed a punitive approach towards NDPS Cases. As it is evident from the NCRB data of the past few years published by the Government of India. The number of accused convicted has been consistently increasing every year and so the conviction rate has been very high under the NDPS cases as per the annual report titled "Crime in India" published by National Crime Records Bureau (NCRB) India.

YEAR	CONVICTION RATE	Conviction number
2016	75.2	7776
2017	70.6	9637
2018	85.7	9113

Source: 'Crime in India' Report Annual Report Published by NCRB, India.





The above table depicts the high conviction rate under the NDPS Act during the years 2016-2018. Though the NCRB reports do not classify

data based on the level of quantities or as traffickers, or drug users. However, the conviction rate of NDPS cases has been consistently highest in the category of Special and Local Laws (SLL) in the last few years.

 REHABILITATION SIDELINED

Under the NDPS Act consuming any narcotic drug or psychotropic substance is a criminal offence. The Act penalises both drug users and addicts, though there is little evidence to show that incarceration of drug addicts helps in decreasing demand for drugs, instead it is shown to have a counter-productive effect. In terms of punishment, S.27 doesn't distinguish amongst first-time, habitual consumers or occasional users who may benefit from early identification and education on substance abuse. The punitive nature of this section deviates from the idea of rehabilitation which seems an appropriate option for tackling drug addiction in India.

INTERNATIONAL PERSPECTIVE: ON PUNISHMENT

When we think about punishment through the lens of the Rule of law. Proportionality appears to be one of the fundamental principles and is implicit in the rule of law, which aims at protecting people from any cruel or inhumane treatment. Across the world, countries have adopted this principle mostly in principle and some in bits and pieces. The application of this principle to drug-related offences is primarily the responsibility of the legislators. They have to define a certain level of penalisation of certain actions and in general, such level of penalisation should be determined based on the nature and level of damage it causes to others in society.

Then, the Courts and Judges should apply the principle of proportionality in such a manner that they award an appropriate punishment in each case, and finally, proportionality even plays a crucial role in the execution of the punishment.

In short, the main idea of the principle of proportionality is that an individual's rights and freedoms should only be curtailed to the extent that is appropriate and necessary for achieving a legitimate aim and in such a manner that is least intrusive to their fundamental rights.

With regard to punishment in drug-related offences, the legitimate aim behind punishing the culprit must adhere to the fundamental objective of the UN Drug Control Conventions to ensure improvement in the overall health and welfare of humankind. Therefore, any punishment for a drug-related offence should be based upon the potential harm that may be caused to the health and welfare of a community by a controlled substance.

Unfortunately, this principle has been applied in a limited manner only for measuring the severity of punishment, time to time, without questioning whether there is need for such punishment or not especially when the contemporary drug policy debaters believe that punishment is no longer the appropriate response to deal with the drug-related offences.

The International Narcotics Control Board (hereinafter INCB) in the year 2007 published its annual report in which it emphasised on the need to meet the standards of proportionality by the States in their sentencing system for drug-related offences . Similarly, in the year 2010, the United Nations Office on Drugs and Crime (hereinafter UNODC) issued a statement requesting the member countries to have proportionate penalties for drug-related offences. UNODC also urged its members to abolish any death penalty provisions for drug-related offences referring to the International Covenant on Civil and Political Rights (hereinafter ICCPR) which permits imposition of the death sentence for the category of 'most serious crimes'.

The International Narcotics Drugs Control Board (INCB) in its 2007 Annual Report mentioned that lack of care for human rights would undermine the implementation of the drug conventions. The United Nations has also recognized that ensuring access to essential drugs is a key element of the right to health. and United Nations General Assembly (UNGA) has repeatedly stated that International Drug Control should be implemented as per the Charters of the UN and with full respect to human rights.

Similarly, article 29(2) of the Universal Declaration of Human Rights (hereinafter UDHR) provides the logic for having proportionality in the sentencing structures, wherein it stated that:

"In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."

The approach of the Indian Parliament in reducing drug use by having stringent punishments as a means for deterrence needs to be tested, based on evidence and its compliance with human rights, including the right to a fair trial.

Most countries have accepted the proportionality principle, though some have not incorporated it in their sentencing framework. For instance, the European Commission for Human Rights (ECHR) has avoided imposing lengthy imprisonment for minor drug offences like personal possession. In the past, movements like 'war on drugs', lead to the adoption of severe penalties which seems evident from the preamble to the 1961 Convention which provides: "addiction to narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to mankind".

Similarly, the Preamble to the Convention of 1988 mentions that; "illicit production of, demand for and traffic in narcotic drugs and psychotropic substances, which pose a serious threat to the health and welfare of human beings and adversely affect the economic, cultural, and political foundations of society". The 1988 Convention does not mention anything about ensuring the availability of drugs for scientific and medical purposes.

Instead, the 1988 Convention implicitly endorses severe measures, for instance, article 24 of the 1988 Convention: "A Party may adopt more strict or severe measures than those provided by this Convention if, in its opinion, such measures are desirable or necessary for the prevention or suppression of illicit traffic". Such statements have motivated and impliedly given the States the option to impose severe punishments in drug laws.

For instance, a review by the UK Sentencing Council found that term of sentences for offences which were violent in nature was generally much lower compared to non-violent drug offences such as importing 10,000 ecstasy tablets for commercial benefit (where the Guidelines suggest a minimum of 14 years). In contrast, the minimum sentence for the offence of rape was five years and for bodily harm was three years in the UK.

- ALTERNATIVE MECHANISM - A WAY TOWARDS REFORM RATHER THAN THE PUNISHMENT

In countries like the U.K., Argentina and the European Union, sentences are much severe for drug-related offences compared to those awarded for violent crimes. The Framework Council also found that some EU members have also imposed strict punishments on drug traffickers. However, now there is a shift towards decriminalisation.

"Portugal – A classic example of the benefits of adopting a reformatory approach"

Portugal was able to reduce drug addiction by nearly half after decriminalising the consumption of all drugs for personal consumption in the year 2001, and further, reducing sentences for 'drug mules' while creating favourable policies on rehabilitation.

As per a report published by Transform Drug Policy Foundation (hereinafter TDPF), in the year 2014 on Portugal's decriminalisation of drugs for personal consumption. The report has been complemented and relied upon by UNODC and the same is available on UNODC archives. The TDPF in its report found that Portugal complemented its decriminalisation policy by allocating a major proportion of resources for strengthening various drugs-related mechanisms, expanding and strengthening the prevention system, treatment facilities, focussing on harm reduction and social reintegration programmes. They encouraged people to voluntarily seek treatment, instead of forcing it upon them.

The report also revealed that level of drug use in Portugal post decriminalisation reached below the European average and drug use reduced among the age-group of 15- 24, who are at the highest risk of initiating drug use. Further, the rate of continuation of drug use (i.e. the proportion of the population that ever used an illicit drug and continued them) has reduced. The Report observed that data on Portugal suggests that abolishing criminal penalties for

personal drug possession did not lead to a rise in levels of drug use.

This was in accordance with significant evidence collected from across the world which reveals that despite the enforcement of criminal drug laws at its best, there is marginal success in the deterrence of drug use.

In the report it was highlighted that: "There is essentially no relationship between the punitiveness of a country's drug laws and its rates of drug use. Instead, drug use tends to rise and fall in line with broader cultural, social or economic trends.

 NO "DRUG MULE" CONCEPT IN INDIA

It is pertinent to note that the concept of 'drug mules' does not find recognition in the Indian statutory law. There is no single definition of the term 'drug mule'. However, EMCCDA defined the term 'drug mule' in its report as:

"A drug courier who is paid, coerced or tricked into transporting drugs across an international border but who has no further commercial interest in the drugs".

EMCCDA found that generally, drug mules were of two types and the mitigating factors should be considered while deciding their cases. They found in the 1990s that 'drug mules' were like courier rather than the trafficker or a 'consumer'. They used to be introduced to a very tiny amount of drugs. They found imposing severe punishments on them were no deterrent. They found poverty and socio-economic reasons were more significant driving forces which motivated people to be 'mules'.

This new perspective concerning drug mules took a few years to be imbibed by the legal community of the EU member countries, which further, lead to recognition of existing severe sentencing structures for drug couriers. Accordingly, Portugal changed its sentencing structure and reduced the sentences from an average period of eight years' imprisonment in the 1980s to five years by the late 1990s. The revamped sentencing structure has made a significant impact on drug use in the country. However, in India, as earlier mentioned there is no distinct concept of drug mules. This area needs more research and data to propose anything substantive regarding the concept of drug mules in India.

Brazil decriminalised drugs for personal use and possession but it imposed severe sentences for trafficking-related offences. For instance, the minimum sentence for trafficking was increased to five years from three years, leading to a high prison population. The sentences for the first-time offenders, who have never indulged in any criminal activity or crime-group has been reduced by two-thirds. However, due to certain factors, there has been disproportionate sentencing. This has led to over 20 percent rise in the number of detainees involved in drug trafficking and approximately 90 percent of them belonging to lower socio-economic backgrounds. The Hon'ble Supreme Court of Brazil in September 2010, held that "a law denying small-time traffickers alternatives penalties to prison is unconstitutional. There should be case by case consideration whether drug treatment or other interventions are more appropriate than prison." This approach also points out the need for finding an alternative to prison in India.

 "SMALL QUANTITY" AS PER GLOBAL STANDARDS

In India, it seems a stricter approach has been followed. The authors have attempted to draw a comparison of how various offences are treated in other countries. As per a study conducted by European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) over half of the countries in Europe consider drug use or consumption as a specific offence though they defer in the quantity and punishment involved. However, some countries have created an exception, as well.

All Member States of the European Union impose more than three years imprisonment as punishment for the offence of drug trafficking, though their definition of drug trafficking might vary. Therefore, if the minimum quantity involved in drug trafficking was defined by different member States at different quantitative levels or defined qualitatively by one and not by another member States, then a case involving an amount under two quantity levels might result in a binding request for arrest and extradition as the offence might be perceived as minor in one country and severe in another.

For instance, Portugal has decriminalised possession of drugs for up to ten days of personal consumption whereas all countries in Europe have penal provisions for offences of production, trafficking, offering, selling, or possession with intent to distribute or supply.

Different members have a different approach; for instance, Austria categorises between 'small amount' (less serious) and big quantity (serious offences). Similarly, Finland defines small and large quantity whereas Belgium, does not identify offences on the threshold of quantities of drugs. Instead, it categorises offences based on the nature of drugs. On the other hand, French law does not make any formal legal distinction between possession for personal use and trafficking. The Ministry of Justice of France issued a notice in June 1999, stating that "possession not involving trafficking may be punished by a maximum of one year in prison, whereas possession involving trafficking would result in up to 10 years' imprisonment".

The following table provides an overview of the offence of how drug use is treated in the following countries as:

What is the punishment for the offence?	Germany Use of drugs is not mentioned as an offence.	Portugal Use of drugs is an administrative offence, and may be punished with administrative measures (no detention), a fine or non-pecuniary sanction for non-addicted users, or non-pecuniary sanction for addicted users. Law 30/2000; art. 2, art. 15.	United Kingdom Only use of prepared opium is explicitly prohibited and punished by up to 6 months imprisonment (summary conviction); up to 14 years imprisonment (conviction on indictment). Misuse of Drugs Act 1971, s.9, Sch 4.
What are the alternatives to punishment for the offence?	Germany There is no alternative to punishment for use, as it is not an offence.	Portugal Drug use is recognized as a health issue and drug dependence as a multi-factorial health disorder, which mostly needs to be treated. For this reason users may be sent to treatment or counselling. Law 30/2000, art.10-14	United Kingdom Drug Intervention Programmes as alternatives to punishment. Criminal Justice And Court Services Act 2000, Criminal Justice Act 2003.
Penalty varies by drug?	Germany Use of drugs is not an offence.	Portugal Fine varies depending on which table the drug is listed in. Law 30/2000, art. 16.	United Kingdom Use of drugs is not regulated by the law, except use of prepared opium which is prohibited. Misuse of Drugs Act 1971, s.9.
Penalty varies by quantity?	Germany [Quantity limits not applicable to consumption offences]	Portugal [Quantity limits not applicable to consumption offences] The commission shall take into account the consumer's circumstances and the nature and circumstances of consumption. Law 30/2000, art.15, nº4.	United Kingdom [Quantity limits not applicable to consumption offences]
Penalty (response) varies for addiction?	Germany Use of drugs per se not regulated by the law.	Portugal Use of drugs is punished with a fine or non-pecuniary sanction for non-addicted users. Pecuniary sanction is never applied for addicted users. Unpaid community service, regular reporting to the commission, the withholding of social benefits, or group therapy, are some of the sanctions applied instead of a fine. Law 30/2000, art. 15.	United Kingdom enalty does not vary by addiction factor. Misuse of Drugs Act 1971.

Whereas the possession is treated as given in the following table:

Question	Germany	Portugal	United Kingdom
What is the punishment for the offence?	Germany Possession of drugs is punished by imprisonment up to 5 years or a fine. Prosecution may be refrained if the offender's guilt is minor, if there is no public interest in the offence and the narcotics were only intended for the offender's own use in small quantities. The court may also abstain from sentencing on the same premises. Act to Regulate the Trade in Narcotics of 28 Jul 1981, s. 29 (1), s. 29 (5), s. 31a.	Portugal Possession of a limited quantity of drugs for personal use (up to 10 days of average individual consumption, as defined in art. 2(2) of Law 30/2000) is an administrative offence, punished by administrative measures (no detention). It may be punished with a fine (only for non addicted users), or non-pecuniary sanctions. However, if the quantity of drugs exceeds the threshold quantity of 10 daily doses, it is considered a crime, and punished by up to 1 year in prison or 120 day-fines. Law 30/2000, art. 2, art. 15. Decree-Law 15/93.	United Kingdom Possession of drugs is a criminal offence. Punishment is linked to the class of drugs involved (A, B, C, with A being the most harmful), and whether sentencing is by a Magistrate's Court (summary) or in a Crown Court (on indictment). Class A drugs: up to 6 months and/or a fine (summary); up to 7 years and/or a fine (on indictment); Class B: up to 3 months and/or a fine (summary); up to 5 years and/or a fine (on indictment); Class C: up to 3 months and/or a fine (summary); up to 2 years and/or a fine (on indictment). Police guidelines specify giving a warning for a first non-problematic personal possession of cannabis, increasing to a fine and then arrest on second and third occasions. Misuse of Drugs Act 1971, s. 5, schedule IV; ACPO Guidance on Cannabis Possession for Personal Use, 2009

 REVIEW PROCEDURE IN OTHER COUNTRIES-

There is also a narrow scope for review under the NDPS Act, which may lead to the treatment of consumers/victims on the same footing as the other offenders and casts doubt on the success of the NDPS Act. The onus of proof lies upon the accused, and the standards of proof are very high, and there are multiple reports of excessive procedural delays and these issues are a threat to the interests of the accused and public at large.

 WHAT ARE THE GLOBAL STANDARDS ON REHABILITATION AND WHERE DOES INDIA STAND

UDHR and the International Guidelines on Human Rights and Drug Policy (HRDP Guidelines) 2019 state that every individual has the right to enjoy the highest attainable standard of physical and mental health and this right also applies to drug laws, policies, and practices.

The HRDP guidelines obligate every State to ensure availability of harm reduction services which are recommended by the technical agencies of United Nations, like the World Health Organisation (WHO), Joint United Nations Programme on HIV/AIDS (UNAIDS) and UNODC. The guidelines also recommend States to adequately fund, and make separate provisions for vulnerable or marginalised groups while complying with their fundamental rights (like ensuring due process, privacy, bodily integrity and no arbitrary detention and maintaining human dignity).

The States should take concrete steps to ensure that drug-related and other health care facilities are available to every individual in an impartial manner and in sufficient quantity and are accessible to everyone. The States should also be considerate about medical ethics, cultural norms, age, gender and the communities being served while ensuring high-quality services.

The States should consider the socio-economic determinants that support or hinder positive health outcomes related to drug use, including stigmatization and discrimination in different ways, against individuals who use drugs.

The States should provide access to drug treatment at par with global standards, available voluntarily and evidence-based care as well as community support and States are obligated to guard against the arbitrary detention of people who use drugs.

The authors suggest conducting appropriate medical tests of those persons seeking rehabilitative treatment. The said tests should be conducted at the time when such application is made and again thereafter, on periodic basis during the treatment process.

SUGGESTIONS FOR THE WAY FORWARD:

 EMPHASIZING ON REHABILITATION NOT ON DETERRENCE:

The NDPS Act in practice has followed a "one size fits all" approach. The Act attempts to punish both drug users and other offenders. The NDPS Act suggests that addicts should also be punished; though, the punishment is of lesser gravity compared to other offences under the Act. This shows the punitive nature of the NDPS Act. Further, due to the pendency, the drug users are subjected to unfair treatment and treated on the same footing as other offenders under the NDPS Act.

The report by Vidhi Centre for Legal Policy, a reputed independent think tank in India, as mentioned earlier, highlighted that the provisions which outline the idea of treatment and rehabilitation as under section 39 and 64 A of the NDPS Act, have been rarely used. The section 64 A of the NDPS Act, 1985 provides:

"[64A. 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 de-addiction 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.]"

In short, the section allows immunity to an addict who volunteers to seek medical treatment for de-addiction provided such person undergoes the complete treatment for de-addiction. As per the Centre's study, no person was sent to de-addiction and rehabilitation centres by the courts in Punjab between 2013-15. The Act employs the terms like "consumer", "personal use", "possession", and "use" without much clarity and without differentiating as to how it affects their guilt. In India, the idea of rehabilitation has always been side-lined, which lead to the treatment of addicts and drug users without distinguishing them from offenders.

In the recent National Mental Health Survey (2015-2016) showed a treatment gap of >70 percent for drug use disorders. In another recent nation-wide survey conducted on 'substance use disorders' has depicted a similar result, showing nearly 75 percent treatment gap for drug use disorders. Adding to the misery, just 5 percent of people having illicit drug use disorders received inpatient care. Such a significant treatment gap is indicative of poor accessibility, limited infrastructure and quality of health care. To meet this unmet need, one should expand the treatment and rehabilitation facilities for substance use disorders.

The authors propose that there is a need to shift from the punitive approach of imposing severe penalties on drug users; instead, they should be sent for medical treatment and rehabilitation. The rehabilitation for drug addicts ought to be the rule while continuing the punitive approach only in offences like trafficking, manufacturing and for other commercial use or purpose. The authors are of the view that there is an imminent need to change the perception towards drug users. There is an imminent need to look at them as victims rather than as offenders or criminals.

The authors also propose how this shift can be actualised. For instance, all sales, trafficking, transportation, manufacturing done for mere profit purpose should be continued to be penalised as per the existing provisions of the NDPS Act. However, a 'user' found in possession of drugs meant only for his personal consumption or found involved in sale and purchase of drugs merely to sustain his personal need for addiction ought not to be penalised with such severe punishment. The NDPS Act and rules do allow a certain quantity of narcotic drugs for medical or scientific use. The Act under section 66 allows possession of specified psychotropic substances by an individual for personal use up-to 100 dosages and in some cases up to 300 dosages at a time provided that individual has a prescription by a Registered Medical Practitioner.

However, due to lack of awareness among the users, and lack of training of officials and non-uniform investigation procedures even the users have to struggle unnecessarily. Due to the stigma attached to drug dependence in India, added with the poor conditions of the treatment and rehabilitation centres, fewer people seek medical help.

Instead, such a 'user' ought to be sent for rehabilitation to drug addiction treatment

centres under medical supervision with the limited role of the police. The availability of drugs like methadone (Methadone is the first and most widely used Opioid Substitution Therapy medicine across the world, followed by buprenorphine) should be easily accessible to all the drug users, rehabilitation and going through OST (Opioid Substitution Therapy) as permitted by the (Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2014). The authors believe that persons who sell drugs only with the intent to earn money to sustain their addiction should be looked upon as victims and not as offenders or criminals.

 LIMITED ROLE OF POLICE AUTHORITIES

By the term-limited use of police, the authors imply that the custody, transportation to a pathologist for testing or the rehabilitation centre should be by a medical team and not by police personnel. Even if, the police are given such task, a special team which is compassionate and trained for the purpose, should be assigned the same, and it should be ensured that they are not in uniform. The user should be allowed to have a family member or a friend along with them.

The 2001 Amendment attempted to grade the punishment under the Act into three categories, but still, it seems that the legislative progress has failed to trickle down and benefit the litigants. Due to frequent adjournments, limited testing facilities, procedural delays, stringent bail provisions and a limited number of Special Courts for trials under the NDPS Act, there is a long period of incarceration as an under-trial.

 REFORMATORY APPROACH TOWARDS ADDICTS

The authors suggest that a reformatory and more humane approach has prospects for a better outcome. A suitable example is Portugal which first decriminalised consumption of drugs for personal use drugs and then followed the reformatory approach for drug addicts which helped to control the menace of drug abuse and trafficking in their country. Now a large population has been rehabilitated, and all this has been possible simply by following the reformatory approach.

The authors strongly believe that during the development of the NDPS Act, the legislature assumed drug addicts as criminals, completely overlooking and neglecting their victimhood. Now, there is a need for change in the approach towards drug-related offences. We need to change our outlook towards the persons involved in these cases, particularly those involved in ‘dealing with small quantities’. We need to start looking at these persons as victims rather than as criminals. The addicts deserve to be treated as victims, since, in the existing socio-cultural aspect, drug use has become more common which can be drawn from different factors like, poverty, depression, urban life, increasing stress and other socio-economic factors. When there is a worldwide shift towards a more compassionate and rehabilitative approach towards the addicts and users, why should India miss the bus?

Mere amending the provisions of the NDPS Act is not the solution. Instead, various other measures need to be taken to bring an overall reform in the way the victims of drug addiction are treated and dealt with by the justice system. There is a need for early detection, psychiatric treatment and comprehensive rehabilitation schemes. There is need for revamping the medical infrastructure and developing alternatives to imprisonment at different stages. The report titled ‘Magnitude of Substance in India’ 2019 draws attention towards the lack of accessibility of medical health for those having alcohol and drug dependence. The report highlighted that only one fourth of such people are able to receive such medical help.

Every case should be treated differently and the need for community involvement is a must. There is a need for proper training of the police officials and adoption of a more compassionate approach towards the addicts and improvement in the scientific evidence-based methods employed for dealing with NDPS cases. Such evidence-based treatment should be made available for people with substance use disorders and at an adequate scale.

 ADOPTING ALTERNATIVE MEASURES TO IMPRISONMENT AT DIFFERENT STAGES

As per the World Drug Report, 2017 people who use drugs generally continue to use drugs while incarcerated and other prisoners may also initiate drug use while in prison. the axiom goes “Liberty is the rule, to which detention must be

the exception." Similarly, The Human Rights and Drugs Policy (HRDP) guidelines obligate the member States to ensure that detention at the pre-trial stage is never made compulsory for people charged with drug-related offences and should be imposed only in exceptional circumstances, where such detention is reasonable, necessary, and proportional. The States shall ensure that they are not detained merely based on drug use or drug dependence. They shall have the right to free trial, and it is drawn from the right to equality.

The Government ought to consider alternatives to imprisonment as suggested by the UNODC (United Nations Office on Drug Control) in its handbook on alternatives to imprisonment at different stages. We need to develop alternative measures to imprisonment without undermining the judicial process. Such measures should be taken so that there is a minimum intervention to one's liberty and human rights. It is essential since pre-trial detention creates a damaging effect on the innocent or victims of drug addiction.

The handbook suggests possible alternatives to imprisonment that may include releasing an accused person, and ordering such individual to perform either one or more of the following:

"to appear in court on a specified day or as ordered to by the court in the future; to refrain from: interfering with the course of justice, engaging in particular conduct, leaving or going to specified places or districts, or approaching or meeting specified persons; to remain at a specific address; to report on a daily or periodic basis to a court, the police, or other authority; to surrender passports or other identification papers; to accept supervision by an agency appointed by the court."

While considering a rehabilitative approach towards the addicts and the victims it would be appropriate to refer the Tokyo Rules which read that "Non-custodial measures should be used in accordance with the principle of minimum intervention". It also suggests that alternatives to detention should be employed at as early stage possible. The Tokyo Rules also list a variety of dispositions which are alternatives to imprisonment at the sentencing stage. These dispositions, if properly defined and implemented, would have an acceptable punitive effect:

"(a) Verbal sanctions, such as admonition, reprimand, and warning; (b) Conditional discharge; (c) Status penalties; (d) Economic sanctions and monetary penalties, such as fines and day-fines; (e) Confiscation or an expropriation order; (f) Restitution to the victim or a compensation order; (g) Suspended or deferred sentence; (h) Probation and judicial supervision; (i) A community service order; (j) Referral to an attendance centre; (k) House arrest; (l) Any other mode of non-institutional treatment; (m) Some combination of the measures listed above."

Similarly, there can be some specific non-custodial sentences like verbal sanctions, conditional discharges, status and economic penalties as suggested by the UNODC. All these alternatives, as outlined by the document published by UNODC need a sincere consideration by all the governments and other stakeholders.

CONCLUSION

Addressing the need to control, deterrence and prohibition on drugs with the view to curb the menace of 'drug abuse', the Indian Parliament enacted the NDPS Act, 1985. It was intended to control and rid the society from the menace of drug abuse and other drug-related crimes. It was not just an international compulsion but a domestic necessity.

However, several reports and even the national level data published annually by the Indian Government titled 'Crimes in India' clearly shows the increasing number of cases registered under the NDPS Act despite high conviction rates. This makes it evident that the Act has failed to curb drug addiction and ensure rehabilitation to those in need despite having stringent and punitive approach towards drug addiction.

Therefore, the authors recommend that there is a need to shift from the existing punitive approach to a reformatory and rehabilitative approach towards who are found to be addicts or drug user. Despite the amendments, in practice, the drug addicts and users are still treated as culprits and a menace to the society rather than as victims. There is a need for having a more cautious and humane approach towards those accused, who are found to be in possession of

small quantity of narcotic drugs and substances for personal use. They do not deserve to be treated on the same footing as those in possession of commercial quantity. This distinction ought to be applied not only during the stage of prosecution but even while serving their term, if found guilty.

The authors recommend that after conviction, the inmates be tested for their mental and psychological condition at regular intervals. For this purpose, a standardised test such as The DSM5 Test maybe employed.

Despite the rehabilitation provision under the Act, the accused are rarely sent to rehabilitation centres and even the existing rehabilitation centres need a structural and functional overhaul for serving the real intent of the Act. Rehabilitation requires that an accused should be treated as a victim rather than a criminal. This entails a reform friendly environment, which brings forth the need for better medical facilities, capacity building while ensuring minimal involvement of police authorities at every stage of a matter involving addicts or users. The identity of the accused found with small quantity should be protected and not disclosed until found guilty as it can have counter-productive effects on the accused. In short, we need a coordinated, multi-stakeholder response to scale-up treatment programmes and efficiently implement treatment and rehabilitation policies in the country.

The matters related to NDPS Act have been subject to high level of pendency due to various factors like lack of Special Courts, testing facilities, frequent requests for re-testing and other procedural delays. These issues have been consistently reiterated by various reports and even the Hon'ble Supreme Court of India. The Apex Court of India has emphasised on the need for establishing more Courts and providing regular training to the judges adjudging the matter and establishing more National and State Level Laboratories. The procedural delays and irregular adjournments and stringent bail provisions have led to the accused spending years behind the bars without being convicted. This is a clear violation of the rights of the accused. Instead, there is a need for adopting more humane approach and using alternatives to imprisonment at different stages of trial is the need of the hour. Therefore, the authors suggest to bring these reforms in the existing legal structure for handling the cases registered under the NDPS Act to serve the three-prong purpose of "prohibition, control and deterrence".

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