

POLICY BRIEF

The NDPS Act: Room for greater reform

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This policy brief The NDPS Act: Room for greater reform written by Mathew John is the second prize winning policy brief written as part of CPPR-ATLAS Public Policy Challenge 2015.

Mathew John is at present serving as a legislative assistant to a member of India's Parliament. By his own admission, Mathew has a keen interest for issues in Public Policy and Diplomacy. He has a BTech from the University of Kerala. Mathew's policy brief suggested amendments to the Narcotic Drugs and Psychotropic Substances Act (NDPS) in India

Drug policy reform in India is a principled and necessary step to enable us to address the underlying issues of marginalization and freedom of choice. This document seeks to point out the pitfalls in the current policy and recommends the following:

- (i) Decriminalization of drug consumption
- (ii) Decriminalization of cannabis

An Overview

In 1961, India was coerced into signing the Single convention on Narcotic Drugs treaty, after having unsuccessfully led those opposed to the intolerance to socio-cultural usage of organic drugs in the UN. Following which, in 1985, the Narcotic Drugs and Psychotropic Substances Act, commonly referred to as the NDPS Act, was enacted by the Parliament in compliance with the UN treaty.

The NDPS Act serves as the principle legislation to deter drug use and trafficking in India. According to it, possession, manufacture and transport of narcotics are prohibited, except for medicinal purposes. However, the NDPS Act makes no distinction between ‘hard’ and ‘soft’ drugs and prescribes a maximum sentence of six-months to any individual found in possession of either of those substances and others listed as ‘illegal’ in the Act. Depending on the quantity of the drugs seized, the jail sentence laid down by the Act range from six-month imprisonment, to a 30-years life imprisonment sentence.

The NDPS Act has undergone three amendments since its inception, with the latest having been passed in February 2014.

The new amendment improves access to narcotics for medical treatment and also includes provisions to improve treatment and care for people dependent on such drugs. For the first time in its history, the amendments includes provisions to improve treatment and care for people dependent on drugs, thereby moving away from abstinence-oriented services to looking at treating drug dependence as a chronic, yet manageable condition.

However, there is significant scope for further reform.

Recommendations

The premise of the NDPS Act is based on the faulty assumption that punitive measures deter trafficking and drug use. People who use drugs find themselves on the wrong side of the law, this result in them being further pushed to the margins of society.

In light of this, this policy brief makes the following recommendations:

Towards decriminalization of drug use:

- ***Proposed deletion of Section 27 from the NDPS Act***

If incarceration reduced addiction, criminalization of addicts can be justified. However, over the years, drug use and addiction has only increased alongside drug trafficking. Stringent penalties provided for by the NDPS Act has done very little to deter drug use. India houses the largest number of repeat offenders guilty of violating the NDPS Act. Around 63 per cent of prisoners in India have a history of drug use and around 23 per cent of the total number have been apprehended for drug-related offences. Instead of addressing the problem of consumption or addiction, incarceration aids drug users' exposure to/and contact with other criminal offenders, likely forcing them into a life of more and serious crime.

In the last decade or so, a growing number of countries have moved towards full decriminalization of use and possession of drugs, with no reported negative consequences on individuals and society. On the contrary, numerous studies in these countries show that there has been significant decline in petty crimes related to drug consumption like theft, decrease in HIV incidence amongst injecting drug users and reduction in recidivist crimes. It has also led to improved access to social services. Apart from this, despite the stringent nature of the NDPS Act, India faces an alarming spike in consumption and injection of illicit drugs among young adults and teenagers - especially, synthetic drugs like heroine, ephedrine and methaqualone.

The problem of drug abuse in states like Punjab has become so severe that more than half of all rural households are home to at-least one drug addict. Incarceration of drug users and subsequent criminal charges, destroy any chance of their rehabilitation or re-integration into society. Out of fear of being incarcerated, drug users are reluctant to come out seeking treatment and instead turn to a life of crime to fuel drug dependency.

This proposal, thus, recommends the deletion of Section 27 which prescribes incarceration for drug consumers and advocates the adoption of more evidence based harm-reduction approaches coupled with counseling as an alternative to incarceration - as data from the EU serves as a testament to its effectiveness. One such viable alternative is to divert nonviolent felony drug offenders to community-based residential treatment facilities.

- ***Reforming Section 64A under the NDPS Act***

The NDPS Act, in principle, seeks to provide “treatment, education, after-care, rehabilitation, social re-integration of addicts”. Section 64A of the NDPS provides “immunity” from prosecution to addicts seeking treatment. However, to avail treatment “proof of addiction”, a psychosocial condition, is mandatory. Some other technicalities include waiting for framing of charge and an “implied admission of guilt”. This has resulted in undermining the legislative intent of the section, which is to discourage criminalization of drug dependent persons and encourage treatment seeking.

Section 64A was not reformed in the 2014 amendment process. It is worth noting that ‘first time’ and ‘occasional’ users are not eligible for treatment but will be charged with criminal proceedings regardless. This policy brief recommends a rephrasing of Section 64A to take place to facilitate access to adequate Harm-Reduction substances to any individual seeking to end or manage his/her drug dependency without having to worry about criminal charges figuring in their permanent records.

- ***Decriminalize cannabis possession and/or consumption***

Until its prohibition in 1985, cannabis was an integral part of Indian traditional medicine, social customs and religious functions. Even the NDPS Act was forced to leave a loophole when it comes to marijuana use by removing the stigma of contraband from the leaves and the seeds - thereby allowing for the consumption of leaves of the plant harvested from wild growths.

It is now widely understood that the UN’s Single Conventions treaty was based on a misplaced sense of morality than on empirical evidence or health concerns about the deleterious effects of marijuana. It is a well-documented fact that marijuana consumption is far less dangerous than alcohol or cigarettes and does not lead to addiction as previously believed. In addition, the widespread belief that marijuana is a ‘gateway drug’ is simply erroneous and has been debunked numerous times since the enactment of the prohibition regime. Potential medical applications of marijuana are many and its prohibition is quite simply wrong and serves only to prevent access to better and more cost-effective drugs for treating ailments.