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# RETHINKING THE NDPS ACT: REHABILITATION OR PUNISHMENT?

-Dhruv Singh<sup>1</sup>

## INTRODUCTION

India's legal framework for combating drug-related issues is primarily governed by the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter, NDPS Act). While its objective is to control drug abuse and prevent illicit trafficking, the Act has drawn significant criticism for being punitive rather than reformative. In the era of evolving jurisprudence and global best practices, it is crucial to revisit whether the Act should continue to focus on punishment or shift towards rehabilitation of drug users.

## UNDERSTANDING THE FRAMEWORK OF THE NDPS ACT

The NDPS Act criminalises activities such as production, manufacture, possession, sale, transport, use, and consumption of narcotic drugs and psychotropic substances. It classifies offences based on the quantity of drugs involved into:

- Small quantity
- More than small but less than commercial quantity
- Commercial quantity

For example, possession of a small quantity of heroin (up to 5 grams) may lead to imprisonment up to 1 year, while possession of a commercial quantity (250 grams or more) leads to a minimum 10-year sentence with a fine under Section 21 of the Act.[1]

Despite this graded punishment, the NDPS Act has been widely viewed as too rigid, especially when it comes to those struggling with addiction. Section 27 criminalises consumption, treating users as offenders rather than patients needing treatment.

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## **THE PROBLEM WITH A PUNISHMENT-ORIENTED APPROACH**

### **MANDATORY MINIMUM SENTENCES**

Sections 21 and 22 of the NDPS Act impose mandatory minimum sentences without allowing much discretion to the judiciary. This fails to account for mitigating circumstances, such as addiction, socioeconomic vulnerability, or first-time offences.[2]

### **BAR ON BAIL (SECTION 37)**

The twin conditions in Section 37-requiring the court to be satisfied that the accused is not guilty and not likely to reoffend-make bail nearly impossible for drug-related offences involving commercial quantities. This often leads to pre-trial incarceration, even in cases involving personal use.[3]

### **BLURRED LINE BETWEEN USER AND PEDDLER**

In practice, law enforcement rarely distinguishes between addicts and traffickers. For example, a dependent user caught in possession of a small quantity may be wrongly classified as a peddler and charged under Section 21(c), leading to long-term imprisonment.

## **WHY REHABILITATION IS A BETTER ALTERNATIVE**

### **ADDICTION AS A HEALTH ISSUE**

The World Health Organization classifies substance dependence as a mental and behavioural disorder requiring medical and psychosocial intervention.[4] Criminalising such a condition only worsens the problem by driving users underground and making them fearful of seeking help.

### **GLOBAL MODELS: PORTUGAL AS A CASE STUDY**

Portugal decriminalised all drugs in 2001 and replaced incarceration with health-based interventions. Studies show a significant drop in drug-related deaths, HIV infections, and incarceration rates post-reform.[5] India could draw valuable lessons from such harm-reduction models.

### **ECONOMIC AND SOCIAL COSTS OF INCARCERATION**

India's prisons are overcrowded. As per the NCRB Prison Statistics 2022, over 28,000 undertrials were lodged in prisons for offences under the NDPS Act alone.[6] Most of them are poor and illiterate, unable to afford proper legal representation or bail.

## **RELAPSE AND RECIDIVISM**

Punishment without treatment does not address the root cause of addiction. Without medical intervention or psychological therapy, many individuals relapse upon release, creating a vicious cycle of drug use and imprisonment.

## **EXISTING REHABILITATIVE PROVISIONS IN THE NDPS ACT**

### **SECTION 64A - IMMUNITY FOR ADDICTS SEEKING TREATMENT**

This section provides immunity to addicts who voluntarily seek de-addiction treatment, provided they complete it satisfactorily. However, in practice, awareness is low, and implementation is inconsistent.[7]

### **SECTION 39 - PROBATION INSTEAD OF IMPRISONMENT**

Courts are empowered to release a first-time offender on probation rather than sentencing them to jail. Yet, this discretionary power is rarely exercised, possibly due to the overarching punitive culture.

### **SECTION 71 - ESTABLISHMENT OF TREATMENT CENTRES**

The Act allows the government to set up treatment, education, and rehabilitation centres, but such centres are either insufficient or poorly managed. The lack of coordinated state action makes these provisions largely ineffective.

## **JUDICIAL INTERPRETATION AND NEED FOR REFORM**

Indian courts have made progressive observations on the shortcomings of the NDPS Act:

- In *Tofan Singh v. State of Tamil Nadu* (2020), the Supreme Court held that statements made to NCB officers are not admissible as confessions, strengthening the procedural rights of the accused.[8]
- The Delhi High Court in several cases has highlighted the need to distinguish between users and traffickers and stressed the role of therapeutic jurisprudence in drug cases.[9]

Despite these observations, statutory limitations such as mandatory minimum sentencing prevent a full-fledged rehabilitative approach.

## **RECOMMENDATIONS FOR A BALANCED APPROACH**

### **DECRIMINALISATION OF PERSONAL CONSUMPTION**

Possession for personal use should not attract criminal penalties. Instead, users can be diverted to mandatory counselling, detox programs, or community service.

### **AMENDMENT OF SECTION 64A**

Make Section 64A more accessible, with simplified procedures and broader applicability. Law enforcement agencies should be required to inform users about this option.

### **ENHANCE JUDICIAL DISCRETION**

Courts should be empowered to depart from mandatory minimum sentences in deserving cases, especially involving users or small-time carriers who are addicts.

### **STRENGTHEN REHABILITATION INFRASTRUCTURE**

Invest in public-funded de-addiction and rehabilitation centres, particularly in rural and backward areas.

### **AWARENESS AND LEGAL AID**

Public awareness campaigns about the rights of drug-dependent individuals and provision of legal aid can ensure fairer outcomes.

### **CLEAR DISTINCTION BETWEEN USERS AND PEDDLERS**

The NDPS Act must be amended to define "user," "addict," and "peddler" separately, with different legal consequences.

## **CONCLUSION**

India stands at a crucial juncture in its battle against drug abuse. While the NDPS Act has helped control drug trafficking to an extent, its punishment-oriented approach has failed to provide sustainable solutions for the thousands who fall victim to substance dependence.

By shifting focus from retribution to rehabilitation, we can uphold the ideals of justice, compassion, and public health. In the words of Justice Krishna Iyer: "Punishment is not revenge; it is reformation."

## **REFERENCES**

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