

Analysis of the Prosecution of Drug Addicts under the NDPS Act: A Victim Justice Perspective

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ABSTRACT

Criminals are always viewed as a disgrace to society, a malady to be eradicated or exterminated. The basic concept associated with the term “Criminal” requires reevaluation and needs a victim justice perspective, particularly with drug addicts and drug abusers under the NDPS. It would be remiss if viewing the criminal justice system didn’t necessitate the function of the Prosecution be relooked as well when addressing such victimized offenders. This paper examines the evolving societal perceptions of drug addicts and advocates for a therapeutic approach to find a lasting solution to the issue, rather than enforcing stricter penalties that jeopardize the futures of innocent, victimized addicts without yielding positive results. The prosecution via treatment and the punishment through rehabilitation, aimed at the overarching objective of establishing a poison-free society, is imperative and the central emphasis of this study. The prosecution’s position as a gatekeeper in assessing the qualifying requirements of prospective participants, who are innocent accused, is a crucial aspect addressed by the researchers for the effective functioning of drug courts. The conventional responsibilities of the prosecutor, which include the apprehension and conviction of the accused, are undergoing a transformation towards a rehabilitative paradigm that permits the advocacy for treatment options for individuals suffering from substance addiction. This shift represents progress, as it rewards prosecutors for demonstrating compassion towards the accused rather than engaging in a win-lose dynamic in each case. “Why is it not possible to achieve a mutually beneficial outcome for both the prosecution and the accused?” is the essence of the whole argument presented in this research report.

Introduction

The primary and conventional duty of the prosecutor is to ensure that “justice is served” for those who have participated in activity that is both repugnant and unlawful. Prosecutors’ offices have seen substantial changes; however, few have challenged these conventional perspectives. The concept has been reexamined to assess the evolution of the prosecutor’s role from its traditional definition and to determine whether the prosecutor should significantly contribute to advancing justice by reforming the criminal justice system and the offender, not solely through severe punishment but also by providing opportunities for change and rehabilitation within societal norms.

This contentious issue is particularly evident in cases involving drug addiction under the NDPS Act, where the accused may be deemed an offender by law, yet their sole transgression is an uncontrollable desire for a specific prohibited substance, which is inherently addictive and renders individuals powerless to their impulses. Imprisoning such an individual exposes him to the detrimental aspects of the prison system and subjects him to a milieu of criminal influences, exacerbating the situation by drawing an innocent addict into a more criminal environment. An alternative to jail imprisonment in such circumstances may be more practical via deaddiction facilities, reformatory homes, or admonition for small and first-time offenses. The authors of this study seek to provide an alternative technique in such instances. To explore the fundamental concept inside the essence of The Narcotic Drugs and Psychotropic Substances Act, 1985, one must first examine its preamble. The preamble of the NDPS Act states:

“An Act to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances

[, to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Conventions on Narcotic Drugs and Psychotropic Substances] and for matters connected therewith.”(NDPS Act, 1985, Preamble).

A cursory examination of the aforementioned text indicates that the objective of the NDPS is to address offenses involving narcotic drugs and psychotropic substances with severity, as implied by the phrase “make stringent provisions.” This reflects a clear application of the Deterrent Theory of Punishment, aiming to set an example through strict penalties in the hope that individuals will refrain from committing such crimes in the future. However, the actual situation contradicts this expectation, as evidenced by the rising crime rates associated with narcotic drugs and psychotropic substances in relation to the penalties imposed. Many of these cases pertain to possession or consumption of minimal quantities, which does not align with the approach taken to mitigate these offenses. Section 22 of the NDPS Act stipulates punishment for possession of psychotropic substances starting from one year. A small amount may result in a sentence of up to 10 years, with a slight increase for a somewhat larger quantity. This range of punishment might extend to the death penalty for repeat possession offenses in certain circumstances (NDPS Act, 1985, Section 31A).

Drug Addict Offender: A Distinct Classification

According to the NDPS, drug addicts are defined as “a person who has dependence on any narcotic drug or psychotropic substance.” (NDPS Act,1985, section 2(i)) This definition indicates that their dependence or compulsion renders them habitual users of the substance, and this compulsion, stemming from the nature of the substance, leads to a loss of control. Consequently, their actions to possess and continuously use the substance become uncontrollable and transcend the realm of strong will or intention to commit a crime knowingly. This raises the question of whether these individuals are truly offenders or victims of compulsive substance use. The consumption of narcotic drugs and psychotropic substances can be characterized as a victimless crime, as the individual consuming the substance becomes the accused, with no other party adversely affected by this personal consumption.

The unique characteristics of drug-related offenses necessitate the treatment of drug addicts as a distinct category, separate from conventional criminals. Consequently, the prosecutor’s role in these cases requires a compassionate approach to enhance their circumstances rather than exacerbating them by incarcerating them among hardened criminals. The conviction of a drug addict also raises numerous post-conviction issues, including societal reintegration challenges following their prison term, which impede their ability to rejoin the mainstream. Furthermore, an analysis of the practical scenario reveals that such convictions yield no substantial benefits for either the addict or society; despite the existence of the NDPS Act, drug use continues to proliferate in states like Haryana and Punjab.

The one section within the NDPS Act that exhibits any leniency towards drug users is Section 64A, which states:

“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 recognized 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.” (NDPS Act, 1984, Section 64A).

The provision remains limited to voluntary treatment submission by addicts prior to being charged. This pre-trial phase relies on numerous assumptions, including the belief that every drug addict is legally informed of the exemption provision and will timely apply to evade legal repercussions. It is

essential for prosecutors to offer an opportunity for the accused addict to rectify their situation if we aspire to cultivate a rehabilitated society regarding drug use.

Imprisonment vs Alternative Rehabilitation

The most apparent detriment to drug users resulting from drug legislation is the legal and physical peril they face. Imprisonment should typically be regarded as harm to the incarcerated individual; otherwise, it would scarcely serve as an effective deterrent. To dissuade specific behaviors, it is proposed that we penalize—by forcibly imposing discomfort upon—those who partake in such behaviors. In this manner, it is anticipated that individuals will be discouraged from engaging in the proscribed conduct (Barnett, 2012).

There are tangible disadvantages regarding those who remain undeterred and engage in such behavior regardless. Does the imposition of penalties on these individuals enhance or detract from their lives? The response is unequivocal. While drug use may be detrimental to an individual, incarceration frequently exacerbates the situation. Typically, in legal considerations, we do not evaluate whether a law's punitive measures worsen the condition of the offender. In fact, such penalties are often intentionally inflicted on the offender to safeguard individuals deemed entirely innocent—such as victims or potential victims of crimes like rape, robbery, or murder (Hospers, 1977). Consequently, we are generally prepared to inflict harm on the offender to protect the innocent. In essence, the targets of these laws are the victims, while the subjects are the criminals.

Drug legislation differs in this regard from numerous other criminal statutes. In the context of drug prohibition, the focus is ostensibly on safeguarding the welfare of potential drug users. Consequently, the intended beneficiaries of drug laws—the individuals these laws aim to “protect”—frequently coincide with those who are themselves regulated by these laws. This duality creates a fundamental issue whenever the object of a law is simultaneously its subject.

The social ramifications of punishment are a significant consideration in the context of the NDPS Act, as criminalization elevates drug prices (Cloud, 1989). The confiscation and destruction of narcotics, by increasing scarcity, leads to a rise in the cost of these illicit goods. Furthermore, the heightened risks faced by manufacturers and distributors due to drug legislation increase production and distribution costs, resulting in elevated prices that incorporate a “risk premium.” The intention is to dissuade individuals with lower incomes from purchasing drugs; however, this objective is seldom realized.

Drug laws foster criminality; however, the detrimental consequences of elevated prices on undeterred individuals are seldom highlighted in debates surrounding these laws. Increased prices necessitate greater income for users. If users are unable to generate sufficient income through legal avenues to afford these higher prices, they may be compelled to resort to illegal activities—such as theft, burglary, and robbery—that they would not typically consider. Thus, by escalating the costs of drugs, drug laws contribute to the proliferation of criminal behavior.

Elevated prices can render drug use more perilous for consumers. Intravenous injection, for instance, is more prevalent in nations where drug cost is high, resulting from prohibition, compel users to adopt the most “efficient” methods of consumption. In countries where opiates are legalized, the primary modes of intake involve inhaling vaporized substances or snorting. Additionally, injection can lead to various health complications. For instance, *“Heroin use induces hepatitis solely through injection, and results in collapsed veins and embolisms exclusively via intravenous administration.”* (Jaffe, 2022, p. 546). Moreover, the epidemic of HIV-AIDS has been partially attributed to the sharing of unsterilized needles among drug users.

Engagement with criminals for drug acquisition - Drug legislation seeks to restrict the consumption of substances desired by certain individuals. Consequently, the illegality of drug sales compels those who wish to use drugs to engage with individuals willing to manufacture and distribute them, despite

the potential for legal repercussions. Often overlooked in dialogues surrounding drugs and crime are the myriad “drug-related” robberies and homicides, occasionally involving innocent individuals mistakenly believed to possess drugs, stemming from the persistent interactions between users and

The underground black market for synthetic drugs is the result of drug regulations that make some comparatively innocuous intoxicants, such as opiates, artificially rare. This scarcity provides a strong incentive for clandestine chemists to develop alternative synthetic pharmaceuticals that can be manufactured more cheaply and with a lower risk of discovery by law enforcement.

The entire expenses involved with criminalizing drug possession are difficult to measure, but they are indisputably high. The criminalization of drug possession, as well as individual jail, probation, or parole, constitutes a substantial misallocation of criminal justice resources, inflicting a large financial burden on US taxpayers. In a 2010 Cato Institute research, Harvard economist Jeffrey Miron calculated that the yearly cost of policing low-level drug possession charges exceeds \$4.28 billion, disregarding the significant extra costs associated with jail, monitoring, and court procedures. Miron also gives a thorough state-by-state examination of drug-related public expenditures, finding that California spends more than a billion dollars, while Florida and Georgia spend hundreds of millions (Drug Policy Alliance, 2017).

Individuals who are stigmatized for their drug use may face social rejection, labeling, stereotyping, and discrimination, including denial of employment, housing, or treatment, even if there are no obvious negative consequences to their use.

Treatment and Rehabilitation as Alternatives to Punishment

Numerous advantages may be obtained from the decriminalization of drug-related offenses. These benefits are evident in a drug decriminalization policy as follows:

- Decreases the quantity of individuals apprehended, imprisoned, or otherwise drawn into the judicial system, thus enabling individuals, their families, and communities to evade the many detriments associated with drug-related arrests, imprisonment, and the enduring repercussions of a criminal record.
- Mitigates discrepancies in the criminal justice system based on race, ethnicity, and poverty.
- Enhances the cost-efficiency of constrained public health resources
- Amends the existing law enforcement incentive framework and reallocates resources to mitigate major and violent crime.
- Establishes an environment that encourages individuals with problematic drug use to get treatment.
- Enhances therapeutic results (where intervention is warranted).
- Eliminates obstacles to the adoption of evidence-based measures aimed at mitigating the potential risks associated with drug use, including drug screening to identify adulterants in illegal drugs.
- According to the Drug Policy Alliance (2017) it enhances the rapport between law enforcement agencies and the communities they are committed to safeguarding
- The utilization of the criminal justice system to facilitate treatment for individuals with problematic drug use is largely unnecessary. While many assert that “hard drugs” such as cocaine, heroin, and methamphetamine possess greater addictive potential than other substances, data indicates that the majority of users do not develop an addiction. However, for those who do, community-based treatment, independent of the criminal justice system, proves to be the most effective means of ensuring their safety.
- A multitude of nations have enacted decriminalization measures, with Portugal serving as a notable exemplar. In 2001, Portuguese legislators implemented a comprehensive decriminalization policy, eliminating criminal penalties for the trivial possession and consumption of all drugs, and reclassifying these actions as administrative offenses. At present, in Portugal, individuals are not subjected to detention or incarceration for drug possession. This policy has facilitated increased

access to treatment for a larger number of individuals, resulting in a reduction in the incidence of HIV/AIDS and drug overdoses, all while maintaining stable rates of crime and drug usage.

Conventional Function of the Prosecution

The third list of the Seventh Schedule of the Constitution of India states that both the Centre and the States have the power to legislate. The position of prosecutor is statutory, not constitutional like that of the Attorney General of India or the Solicitor General of India. Nevertheless, it is the responsibility of the States to safeguard societal interests. Prosecutors represent the State in criminal courts and, by extension, protect the interests of victims. Thus, indirectly Prosecutors are obligated to safeguard the interests of the State.

The Prosecutor's role is not to relentlessly pursue a conviction irrespective of the evidence; rather, their primary obligation is to ensure the administration of justice. The exemplary Public Prosecutor prioritizes justice over securing convictions or appeasing State Government departments. They must view themselves as an agent of justice, devoid of any apparent eagerness for a conviction. The objective of a criminal trial is to ascertain the guilt or innocence of the accused, and the Public Prosecutor's duty is to represent the State, not any specific party. The prosecution must be conducted with the highest degree of fairness. In executing the prosecution, the State is motivated solely by the desire to protect the community, not by any vengeful impulses. Thus, there should be no apparent eagerness for, or grasping at, a conviction.

In *Jitendra Kumar@ Ajju vs. State* (2000), it was noted that the Public Prosecutor represents the State within the Criminal Justice System. The Public Prosecutor is regarded as a Minister of Justice, essential for upholding integrity and impartiality in criminal justice administration. In *Habeeb Mohamad v State of Hyderabad* (1954), it was determined that regardless of the case's position, the Prosecutor must present all facets of the case, both for and against the accused, to the court. The Prosecutor's responsibilities extend beyond constructing a robust prosecution; they also encompass presenting the opposing perspective to the courts.

Section 370 of *Bhartiya Nagarik Suraksha Sahita, 2023* (BNSS, 2023) is pertinent in situations where the aforementioned alternative approach has yet to be implemented; the withdrawal of minor prosecutions may provide a more effective resolution to the issue. As previously indicated, it permits the public prosecutor or the assistant public prosecutor responsible for a case to withdraw from prosecution, subject to the court's approval, at any time before the issuance of a judgment. The authority conferred upon the public prosecutor is derived from statutory provisions and must be exercised in the interest of the administration of justice.

The function of the public prosecutor is aligned with a public objective, designating the officer with the responsibility to operate exclusively in the interest of administering justice. In the case of *Koli Nana Bhana and others v. State of Gujarat* (1986), the prerogative to withdraw prosecution is vested in the Prosecutor assigned to the matter. This prerogative is solely vested in the Prosecutor, who possesses the authority to initiate a withdrawal should the circumstances of the case justify such a course of action in accordance with existing regulations.

Evaluating the Alternative Function of Prosecution

The American Bar Association has established comprehensive functions and guidelines delineating the responsibilities and roles of the prosecution within the framework of the criminal trial process. In its Standard No. 3.1.1, the American Bar Association (2017) delineates a "Prosecutor" as an administrator of justice, a fervent advocate, and an officer of the court. It is also stated that his office ought to exercise prudent discretion and independent judgment in the execution of the prosecutorial function. The overarching objective of a prosecutor is to uphold the public interest, necessitating the exercise of integrity and balanced judgment to enhance public safety. This is achieved through the pursuit of criminal charges of suitable severity, as well as the judicious exercise of discretion to refrain

from initiating criminal charges in circumstances deemed appropriate (American Bar Association, 2017). Subrule (e) of the aforementioned regulation stipulates that the prosecutor must possess the requisite knowledge to assess and evaluate potential alternatives to prosecution or conviction that may be relevant to specific cases or categories of cases. His office ought to be accessible to support community initiatives aimed at addressing issues that contribute to, or arise from, criminal activity or perceived deficiencies within the criminal justice system. It is essential to recognize that he is not solely a case processor; he also functions as a problem-solver, tasked with contemplating the overarching objectives of the criminal justice system.

The prosecutor's discretion may be exercised by considering the following factors: the prosecutor's uncertainty concerning the accused's culpability, the extent or absence of harm caused by the offense, the offender's background and attributes, including any voluntary restitution or rehabilitation efforts, and whether the mandated or likely punishment, along with any collateral consequences, is disproportionate to the particular offense or the offender.

Section 67 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act permits the admission of statements made by an accused individual to a designated officer as evidence in court. Nevertheless, it does not expressly include statements that resemble confessions or inquiries that may result in criminal proceedings against the individual in question. Consequently, it is imperative to examine the constitutional ramifications and constraints associated with this clause. Upon examining Section 67 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, it becomes evident that there are significant concerns regarding the authority of the designated official to document statements made by the accused, as well as the subsequent admissibility of such statements as evidence. This section examines Section 67, which empowers authorized authorities, as delineated in Section 53 of the NDPS Act, to convene and interrogate any individual, including the accused, who possesses information pertinent to an ongoing investigation. Section 67 confers upon authorized authorities the power to summon any individual, including defendants, to provide information or documentation pertinent to infractions of the NDPS Act or its accompanying regulations. It is imperative to observe that Section 67 employs the expression "enquiry" in lieu of "investigation." Pursuant to Section 42, law enforcement officials possess the authority to enter residences, execute inquiries, collect evidence, and effectuate arrests; however, they are not explicitly granted the mandate to carry out investigations. Pursuant to Section 173 of the BNSS, 2023, the officer in command of the police station within the relevant geographical jurisdiction in which the offense transpired is tasked with the responsibility of commencing an investigation. Moreover, Section 52(3) of the Narcotic Drugs and Psychotropic Substances (NDPS) Act mandates that officers designated in Section 42 must convey apprehended individuals and confiscated materials to either the officer in command of the nearest police station or the officer appointed under Section 53 of the NDPS Act, with the objective of facilitating the provision of evidence. This section examines Section 67, which empowers authorized authorities, as delineated in Section 53 of the NDPS Act, to convene and interrogate any individual, including the accused, who possesses information pertinent to the context of an ongoing investigation.

Section 67 confers upon authorized authorities the power to summon any individual, including those accused, to provide information or documentation pertinent to infractions of the NDPS Act or its associated regulations. It is imperative that Section 67 employs the term "enquiry" instead of "investigation." Pursuant to Section 42, authorities possess the power to enter premises, execute inquiries, collect evidence, and effectuate arrests; however, they are not explicitly empowered to carry out investigations. Section 173 of the BNSS, 2023, stipulates that the officer in command of the police station within the relevant territorial jurisdiction is tasked with initiating an investigation into a criminal incident.

Moreover, Section 52(3) of the Narcotic Drugs and Psychotropic Substances (NDPS) Act mandates that officers enumerated in Section 42 must report any apprehended individuals and seized items to either the officer in command of the nearest police station or the officer designated pursuant to Section

53 of the NDPS Act. It is essential to emphasize that a statement made by an accused person to an authorized officer in accordance with Section 67 of the NDPS Act is admissible as evidence in a court of law. Nevertheless, this section omits remarks that resemble admissions or inquiries that could potentially implicate the individual. Consequently, it is imperative to assess the constitutional ramifications of this provision from a more comprehensive perspective; it may be concluded that Section 180 of the BNSS, 2023 is analogous to Section 67 of the NDPS Act. Section 180 of the BNSS, entitled "Examination of Witnesses by Police," authorizes investigating officers to perform oral interviews with individuals who are presumed to possess pertinent information related to a case. Nevertheless, Section 181 stipulates that such remarks possess no evidentiary value, irrespective of whether they constitute confessions, and may solely be utilized by the defense to counteract evidence presented by the prosecution. Moreover, Section 180 of the BNSS, 2023 stipulates that individuals are required to provide truthful responses to all inquiries posed by law enforcement officers, with the exception of those that may incriminate them or result in criminal liability. In the matter of *Nandini Satpathy v. P.L. Dani* (1978), Justice V.R. Krishna Iyer articulated that Section 180 of the BNSS is predicated upon Article 20(3) of the Indian Constitution, which prohibits compelling an accused individual to provide testimony against themselves. In the case of *State of Uttar Pradesh v. Deoman Upadhyaya* (1960), a five-judge tribunal was convened to ascertain the constitutionality of Section 162 of the CrPC in connection to Section 27 of the Evidence Act.

It has been observed that, in accordance with Sections 25 and 26 of the Evidence Act, any statement made to a police officer that constitutes a confession will be deemed tainted and, consequently, unreliable. In the case of *Kartar Singh v. State of Punjab*, a Constitution Bench of the Supreme Court delineated obligatory conditions for the recording of confessions. The cumulative impact of the findings in *Pakala Narayan Swami* (1939) and *Kartar Singh* (1994) illustrates that a voluntary declaration made by an accused in a non-coercive environment, wherein the individual admits to culpability or acknowledges the majority of the facts pertinent to the allegation, is regarded as a valid confession. An analysis of Section 67 of the NDPS Act reveals that the Act and its accompanying regulations do not establish equivalent stipulations. The Act does not require confession documentation for procedural purposes. Pursuant to the provisions of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, designated authorities possess the power to convene individuals for interrogation and compel them to provide confessions or incriminating admissions. While there may be distinctions between the responsibilities of police officers and revenue officers, this does not suggest that revenue officers lack the authority to investigate violations of the NDPS Act.

As authorized officials, they may employ pressure or coercive tactics to obtain statements with the objective of securing a conviction. Moreover, individuals who submit comments are not afforded the protections stipulated in paragraph (2) of Section 180 of the BNSS and are legally compelled to respond to all inquiries, including those that may lead to criminal proceedings against them. Consequently, it is evident that the interpretation of this provision is in direct conflict with Article 20(3) of the Indian Constitution.

The Development of the Drug Court Model in the United States

The researchers of the paper have concentrated their investigation on the drug court model, predominantly implemented in the United States, where the emergence of the drug court "movement" is best comprehended within the framework of evolving sentencing policy objectives over the past fifty years. In the U.S., a trend towards rehabilitation emerged in the 1950s, resulting in the establishment of various programs for diverse offenses. However, by the late 1980s, this trend began to wane, leading to incarceration becoming the predominant method for addressing criminal behavior. Judges frequently sentenced drug offenders to probation or imprisonment, yet they often reappeared due to revocations or new charges (National Drug Court Institute, 2011). Consequently, there arose a necessity to reform this conventional approach to effectively tackle the escalating issue of drug abuse and addiction.

Article 3, paragraph 4, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 empowers parties to provide, either as an alternative or in addition to conviction or punishment, that drug offenders must undergo measures of treatment, education, aftercare, rehabilitation or social reintegration (United Nations, 1961).

In 1989, a consortium of justice professionals inaugurated the nation's inaugural drug court in Miami-Dade County, motivated by their discontent with the elevated rates of recidivism. This methodology incorporated therapeutic interventions within the criminal justice framework, thereby enabling offenders with substance abuse issues to receive the necessary assistance. A report published in The New England Journal of Medicine analyzed over 30,000 prison records pertaining to inmates released from the Washington State Department of Corrections between July 1999 and December 2003. The findings indicated that the mortality risk among former inmates was more than twelve times greater than that of other state residents during the initial two weeks following their release, with drug overdose identified as the predominant cause of death (United Nations, 1961). Drug courts endeavor to terminate this cyclical pattern. Rather than incarcerating individuals convicted of substance offenses, these programs provide them with the opportunity to participate in evidence-based rehabilitation.

According to the United Nations Office on Drugs and Crime (1999), Drug Courts are “*judicial bodies that address drug-related offences and offenders through innovative procedural methods designed to prevent future criminal conduct via court-mandated treatment and rehabilitation programs.*” In administering justice, the judge is supported by a cohesive multidisciplinary team of professionals dedicated to a shared objective. Consequently, the drug court team comprises judges, a drug court coordinator, prosecutors, defence attorneys, and medical professionals, among others, to ensure the efficacy of this treatment-oriented alternative.

The Function of Prosecution in Drug Court Treatment and Rehabilitation of Substance Abusers

In 1995, the U.S. Department of Justice (DOJ) established a Drug Courts Program Office to facilitate the implementation and funding of numerous local drug treatment courts emerging nationwide. In collaboration with the National Association of Drug Court Professionals, the Drug Courts Program Office published a prominent report in 1997 titled *Defining Drug Courts: The Key Components*, stipulates that the prosecuting attorney's duty is to safeguard public safety by verifying that each candidate is suitable for the program and adheres to all drug court stipulations (Drug Courts Program Office, 1997).

Prosecutors in drug courts assume distinct roles and responsibilities compared to their counterparts in criminal courts. In drug courts, they are anticipated to adopt a therapeutic approach, collaborate with the drug court team, and endorse the mission and objectives of problem-solving courts (National Drug Court Resource Center, 2017).

Their function may be principally categorized into three divisions.

- Functioning as a Gatekeeper and Establishing Eligibility Criteria
- Evaluation and oversight
- Sanctions and Initiatives.

Contribution to the formulation of Eligibility Criteria and Assessment

The prosecutor's role is non-adversarial, requiring collaboration with a team to establish or assess eligibility criteria. These criteria must be evidence-based to effectively identify the optimal population that maximises cost savings and public safety outcomes while ensuring consistency within the participant group (Carey, Finigan, & Pukstas, 2008).

Evaluation and Surveillance

The National Drug Court Institute's (NDCI) Adult Drug Court Planning Initiative delineated essential abilities in its Core Abilities Guide, which prosecutors may reference for assistance when operating inside a drug court. According to the National Drug Court Institute (n.d.) competencies specified are:

- Actively participates as a member of the drug court team, committing to the program's vision and objectives, and collaborates as an equal partner to ensure their success. The prosecutor, while participating in drug court, assumes the role of a collaborative team member, operating in a non-adversarial manner and promoting a sense of cohesion. Within the drug court team, in appropriate non-court settings (such as personnel meetings), the prosecutor advocates for the implementation of effective incentives and consequences pertaining to adherence to the program or the lack thereof.
- Addresses community safety concerns by maintaining eligibility standards within a non-confrontational environment that highlights the benefits of therapeutic program outcomes.
- Assesses the progress of offenders to determine behavioral criteria necessary for continued participation in the program and proposes suitable rewards and sanctions for adherence to these standards. The individual must demonstrate proficiency in the fields of addiction, alcoholism, and pharmacotherapy, utilizing this expertise to effectively address conformance in a therapeutically appropriate manner. It is essential to possess an understanding of the gender, age, and cultural factors that may impact the offender's likelihood of success. Facilitates the team's initiatives in community education and local resource procurement.

Sanctions and Incentives

Core Competency 3 in NDCI's Core Competency Guide asserts that prosecutors must advocate for immediate sanctions following non-compliant behaviour. NPC Research indicates that immediate sanctions can yield a 100% increase in cost savings (NPC Research, 2012). Prosecutors should advocate for a prompt response to ensure that opportunities to sanction non-compliant behavior or incentivize compliant behavior are not overlooked. However, this does not imply that jails should be utilized as a frequent alternative, as this may lead to increased recidivism rates among drug treatment candidates, undermining the fundamental objective of such alternative treatments.

The Challenges & Way Ahead

The overarching principle of criminal law, which posits that "*bail is the rule and jail is the exception*," as articulated in the seminal ruling of *State of Rajasthan, Jaipur v. Balchand @ Baliay* (1978), does not extend to particular statutes, including the Narcotic Drugs and Psychotropic Substances Act. Under the Narcotic Drugs and Psychotropic Substances Act, the granting of bail is frequently considered an exception rather than the standard practice. Consequently, attention is directed towards the increasing annual rate of case registrations and the subsequent substantial rise in the population of under-trial detainees within the country. As per the Crime in India Report, maintained by the National Crime Records Bureau under the auspices of the Ministry of Home Affairs, the number of undertrial prisoners was recorded as follows: 148,350 in 2018, 160,103 in 2019, 371,848 in 2020, 427,165 in 2021, and 434,302 in the latest report (National Crime Records Bureau, 2022). The population of undertrial detainees is experiencing a daily increase, with a considerable proportion of these individuals facing charges under the Narcotic Drugs and Psychotropic Substances Act (NDPS). Pretrial detainees within correctional facilities frequently endure inhumane treatment, leading to violations of their human rights. These rights, considered inherent and universal, are guaranteed to all individuals by virtue of their humanity, irrespective of gender, caste, ethnicity, or language. The human rights of undertrial inmates have been subjected to comprehensive examination. Every individual accused of a crime possesses a fundamental right to be presented before a magistrate within 24 hours of their detention, as enshrined in Article 22(2) of the Indian Constitution and stipulated in Section 58 of the BNSS, 2023.

This precaution is designed to safeguard inmates from potential mistreatment and abuse by law enforcement personnel during their period of detention. This privilege is essential as it functions to avert the capricious detention of individuals by law enforcement agencies. In the matter of *Sharif Bai v. Abdul Razak* (1961), the Supreme Court ruled that neglecting to produce the accused before a judge by the deadline renders the incarceration unlawful. Moreover, the apprehending officer is obligated to apprise the detained individual of the grounds for their incarceration as well as their entitlement to parole. This guarantees that the individual in custody has the opportunity to pursue parole and

adequately prepare a defense within a reasonable timeframe. In the matter of *State of Rajasthan v. Balchand alias Baliay*, the Supreme Court underscored that incarceration is unwarranted if the accused's presence can be guaranteed through alternative measures. The court underscored that bond should take precedence over incarceration. Moreover, Article 22(1) of the Constitution confers upon an individual who has been detained the right to seek counsel and to be represented by a legal practitioner of their choosing. Nevertheless, certain undertrial detainees face economic disadvantages that preclude them from obtaining legal representation or securing parole. Article 39A of the Constitution mandates the provision of free legal assistance to ensure equitable access to justice for all individuals, irrespective of their economic status or any other constraints. In cases such as *M.H. Hoskot v. State of Maharashtra (1978)* and *Hussainara Khatoon v. State of Bihar (1979)*, the Supreme Court determined that the denial of legal assistance to impoverished accused individuals constitutes a violation of the principles of equity and justice enshrined in Article 21 of the Constitution.

The court mandated that undertrial detainees receive legal representation at the expense of the state for the purposes of requesting parole and contesting remand during court proceedings. The criminal justice system operates under the presumption of innocence until such time as culpability is established beyond a reasonable doubt. Consequently, individuals in custody or pretrial detainees do not require frequent restraint through shackling. In the case of *Prem Shankar Shukla v. Delhi Administration (1980)*, the Supreme Court condemned the arbitrary application of handcuffs on detainees, asserting that such restraints should be employed solely in exceptional circumstances and only with substantiated justifications presented to the presiding court for approval.

Following a thorough assessment of the established model in the United States and its enduring efficacy in addressing the issue of drug addiction by treating individuals as victims rather than offenders, several pertinent inquiries emerge for a nation such as India, which continues to contend with the pervasive challenges posed by severe drug abuse and addiction. As previously articulated, the Narcotic Drugs and Psychotropic Substances (NDPS) Act has adopted a stringent approach by categorizing the use and possession of such substances as offenses, thereby establishing a formidable deterrent. Nonetheless, while Section 64A of the NDPS Act represented a commendable initial step, the NDPS Courts and the associated team of professionals, including Prosecuting Attorneys, have failed to fully leverage and realize the potential of this provision. Although the legislation permits the rehabilitation of individuals with substance use disorders, the sections pertaining to punitive measures do not delineate the criteria for determining which individuals will be directed to rehabilitation and which will face incarceration. It remains ambiguous whether this rehabilitation period is considered an integral component of the penitentiary sentence or a separate form of retribution. In other terms, individuals who engage in substance use are perceived as both offenders and victims. A study entitled "From Addict to Convict: The Working of the NDPS Act in Punjab," authored by the Vidhi Centre for Legal Policy, indicates that between 2013 and 2015, no individual presented before the courts in Punjab was mandated to undergo de-addiction and rehabilitation through judicial intervention. Research indicates that numerous interviews conducted with judges and attorneys revealed that this mechanism for facilitating the transfer of individuals with addiction to recovery programs was largely unfamiliar to legal practitioners and judges (Vidhi Centre for Legal Policy, 2018).

Justice Mukul Mudgal, who commenced this investigation, stated that individuals struggling with addiction are being utilized as "scapegoats" in the ongoing drug trafficking crisis. "*Commercial drug traffickers are infrequently subjected to punitive measures, and this situation necessitates reform.*" (NDTV, 2018). The theory of deterrence is ineffective. It is evident that the indifference and redundancy inherent in the NDPS Act have profoundly affected rehabilitation efforts. The insufficiency of concomitant institutional mechanisms, such as judicial training and vital rehabilitation systems, has rendered the statute's reformatory objective nugatory. In order to effectively address the issue of substance misuse and addiction, it is imperative to meticulously evaluate and integrate the model employed in the United States, along with the extensive responsibilities and regulations delineated for prosecuting attorneys, into the nation's criminal justice

framework. Prosecutors operating within drug courts must achieve a delicate equilibrium between safeguarding public safety and formulating consistent eligibility criteria that maximize cost efficiency. Although prosecutors are often regarded as the custodians of the judicial process, they have the ability to utilize their leadership and commitment to the drug rehabilitation program to promote cooperation among other stakeholders within the judicial system

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