
REHABILITATION OF DRUG ADDICTS UNDER NDPS: A SHIFT FROM DETERRENCE TO REFORMATIVE APPROACH

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ABSTRACT

Criminals should be weeded out or eradicated because they are a disgrace to society. A common understanding of the term "criminal" needs to be reconsidered, particularly when it comes to drug addicts covered by the NDPS. In a similar vein, when dealing with such victimized offenders, the prosecution's role also has to be reviewed. The goal of this essay is to examine how society's perception of drug addicts is evolving and how therapeutic approaches can be used to find a long-term solution to the issue instead of punishing addicts harshly, which would only ruin their lives and provide no other hope. The main topic of this study is the urgent necessity for prosecution in the form of treatment and punishment in the form of rehabilitation, with an eye towards the ultimate objective of establishing a society free of poisons. A key scheme explored by the researchers is the role of the prosecution as a gatekeeper for determining the eligibility criteria of the possible participant cum innocent accused leading to a constructive working of the drug courts. The prosecution is rewarded for showing compassion for the accused rather than viewing each case as a win-lose negotiation. This is a positive shift from the traditional role of the prosecutor, which included the arrest and conviction of the accused, to a reformatory approach that included the ability to recommend treatment for drug addicts. The key claim of this research study is, "Why can't there be a win-win situation for both the prosecution and the accused?"

Keywords: Drug Addicts, NDPS, Rehabilitation, Prosecutor.

1. INTRODUCTION

The most fundamental and traditional responsibility of a prosecutor is to assure that "justice was done" to the people who are involved in both culpable and unlawful conduct. The prosecution system and prosecutors office specifically have gone through There have been significant changes in prosecutors' offices, but few that called these traditional visions into question. The same thought has been revisited to see how the role of the prosecutor has changed over the year from its traditional sense and whether he should play a major role in furthering the cause of justice by reforming the criminal justice system and the offender, not just by harshly punishing him each time but also by giving them a chance to change and rehabilitate in the norms of the society.

This burning argument even seems prominent in drug addict's case of NDPS where the accused may be an offender in the eyes of law, but his only fault is a compulsive craving for a specific banned substance which in itself is an addicting one and which leaves a person helpless in the hands of its senses. Punishing such a person with imprisonment leaves him wide open to other negativities of the prison system and hands him over to the surroundings of criminal elements, making things even worse by affecting an innocent addict to a more criminal sphere. An alternative instead of prison confinement in such cases may look to be a more viable alternative through deaddiction centers, reformatory homes, admonition is minor and first-time cases. With this contention the authors in this paper want to further a different approach in such cases.

To search for this ideal thought into the soul of The Narcotic Drugs and Psychotropic Substances Act, 1985, the very first thing to be looked into is the preamble of it. The preamble of NDPS Act reads as follows:

*"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."*¹

By a cursory reading of the above words, it seems apparent that the object with which NDPS has been made is to deal with offences of narcotic drugs and psychotropic substances with a stern hand by providing harsher punishment as the word "make stringent provisions" suggests. A clear use of Deterrent Theory of Punishment by setting an example through strict punishment in expectation that people will deter from committing such a

¹ Preamble, The Narcotic Drugs and Psychotropic Substances Act, 1985 (Act No. 61 Of 1985).

crime again by looking at the example. Although the ground reality is quite the contrary when we see the real figure of increasing crimes rates of offences related to narcotic drugs and psychotropic substances verses the punishment being imposed. A lot of these cases include crimes related to possession or consumption only, that too of a very small quantity, which does not correlate with the approach being used to curb it. Section 22 of NDPS Act provides punishment for possession of Psychotropic Substance from 1 year in small quantity to 10 years for a little bit more than small quantity. This quantum of punishment ranges even till death penalty for subsequent possession cases in certain matters.¹

2. DRUG ADDICT OFFENDER: A SEPARATE CATEGORY

Drug addicts are defined under NDPS as “a person who has dependence on any narcotic drug or psychotropic substance”². As deduced from the above definition it is their dependence or compulsion which makes them a regular user of the said substance and it is this compulsion due to the nature of the substance which makes the matter out of their control. Thus, their action to keep the said substance in their possession and continuous use become a matter out of their control and out of the ambit of strong will or intention to commit knowing it to be a crime. This raises another question as to whether these accused are actually the offenders or the victim of a compulsive substance? Use of narcotic drugs and psychotropic substance can be said to be a victimless crime as the person consuming the same becomes the accused and there is no other person affected by this personal consumption.

It is this peculiar nature of this crime by drug addicts that demands their treatment under a separate category than the normal usual criminals and subsequently the role of the prosecutor in such cases which requires a sympathetic approach to improve their situation rather worsening it by sending them to prison cells in between hardcore criminal elements. The conviction of a drug addict raises many subsequent issues after conviction as well. Their acceptance by the society after jail term also creates a hindrance for them from joining part of the mainstream. In addition, even if we analyse the practical scenario their conviction has not produced any substantive benefit to the addict or the society rather regardless of the existence of NDPS Act use of drugs is going rampant in states like Haryana, Punjab, etc.

The only provision under NDPS Act showing some sympathy to the drug addicts is Section 64A which reads as follows:

“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.”*³

Although the provision is still restricted to voluntary submission for treatment by the addicts in anticipation of being charged. A pre-trial stage which is based on a lot of presumption including the presumption that every drug addict is legally aware of the said provision of exemption and will get the chance to apply in time to get away from the clutches of law. An opportunity after being caught to be provided by the prosecutor to improve the situation of the accused addict is much needed, if we want to achieve a drug rehabilitated society.

3. INCARCERATION V. ALTERNATIVE TREATMENT

The physical and legal risk that drug restrictions impose on drug users is the most obvious harm that these policies produce. Imprisonment must be proportionate to the harm done to the prisoner in order for it to serve as a deterrence. It is recommended that we punish in the sense of inflicting pain upon individuals who engage in specific conduct, in order to discourage such behaviour. In so doing it is hoped that people will be dejected from engaging in the prohibited conduct.⁴

¹ Sec 31A, The Narcotic Drugs and Psychotropic Substances Act, 1985 (Act No. 61 Of 1985)

² Section 2 (i), The Narcotic Drugs and Psychotropic Substances Act, 1985 (Act No. 61 Of 1985).

³ Section 64A, The Narcotic Drugs and Psychotropic Substances Act, 1985 (Act No. 61 Of 1985).

⁴ The Harmful Side Effects of Drug Prohibition Randy E. Barnett Georgetown University Law Center, Georgetown Public Law and Legal Theory Research Paper No. 12-037

What about people who participate in such behaviour despite being discouraged? There are real drawbacks to that. Does punishing these people improve or worsen their quality of life? The response is evident. Even while drug use might have negative effects, being incarcerated frequently exacerbates these problems. Generally, we don't think about whether a law punishes a lawbreaker and makes him worse off while debating legality. In fact, typically, the purpose of this kind of punishment is to keep the lawbreaker from harming someone else that we believe to be entirely innocent, such as the victim or prospective victim of a rape, robbery, or murder.¹ To protect the innocent, we are consequently quite willing to inflict pain on the lawbreaker. Stated differently, the victims are the objects of these laws, and the criminals are the subjects of these laws.

This is one way that drug laws differ from many other criminal laws. We are meant to care about the welfare of potential drug users when we restrict drugs. Therefore, the people that drug laws are intended to "protect", i.e. the objects of drug laws, are frequently also the people that the laws themselves target. But when a law's subject and purpose are the same thing, an issue occurs.

Social impact of punishment is also a major concern while dealing with the punishments under NDPS Act as the Illegalization makes the prices of drugs rise.² All other things being equal, the price of the illegal commodity increases when narcotics are seized and destroyed because of the increased scarcity. Drug regulations also raise the cost of manufacturing and distribution by placing more risk on those who manufacture and sell, which forces higher pricing that represent a "risk premium." The purpose is to deter those who do not have high incomes from buying. But it rarely achieves that.

- i. **It breeds criminality**-But higher prices take their toll on those who are not deterred, and these adverse effects are rarely emphasized in discussions of drug laws. Higher prices require higher income by users. If users cannot earn enough by legal means to pay higher prices, then they may be induced to engage in illegal conduct—theft, burglary, robbery—in which they would not otherwise engage. By raising the costs of drugs, drug laws breed criminality.
- ii. **Higher prices can also make drug use more hazardous for users.** Intravenous injection is more common in nations where high drug prices as a result of prohibition push users to find the most "efficient" way to take the drug. The two main ways to consume opiates in nations where they are allowed are either snorting them or breathing in the fumes from heated narcotics. Additionally, injection usage may result in other health issues. As in case of "Heroin use causes hepatitis only if injected and causes collapsed veins and embolisms only if injected intravenously."³ Lastly, sharing of unsterilized needles by drug users has contributed to the spread of HIV-AIDS.
- iii. **Deal with criminals to buy**- Drug laws aim to forbid the use of substances that some individuals choose to use. People who still want to use drugs are therefore compelled to deal with those who are prepared to manufacture and sell drugs despite the possibility of punishment because it is illegal to sell drugs legally. The countless "drug-related" robberies and murders (often of innocent people mistakenly believed to possess drugs) brought about by the ongoing interactions amongst users are typically overlooked in talks of drugs and crime.
- iv. **Victims of crime**- Victims of crime are likely to be users. As an Assistant States Attorney in Cook County, Illinois, I would guess that around half of the murder cases I handled involved drugs, meaning that the deceased was slain because it was believed he had drugs or money from the sale of drugs.
- v. **Black Market for synthetic drugs**- Drug regulations artificially reduce the supply of some relatively safe intoxicating substances, such as opiates, which in turn provides a strong black-market incentive for covert chemists to produce substitute "synthetic" narcotics that can be produced more cheaply and with a lower chance of being discovered by law enforcement.

¹ John Hospers, *Retribution: The Ethics of Punishment*, in *ASSESSING THE CRIMINAL: RESTITUTION, RETRIBUTION, AND THE LEGAL PROCESS* 181, 181–209 (Randy E. Barnett & John Hagel III eds., 1977)

² Morgan Cloud, *Cocaine, Demand, and Addiction; A Study of the Possible Convergence of Rational Theory and National Policy*, 42 *VAND. L. REV.* 725, 757 (1989).

³ JOHN KAPLAN, *supra* note 6, at 9 (citing Jerome H. Jaffe, *Drug Addiction and Drug Abuse*, in *GOODMAN AND GILMAN'S: THE PHARMACOLOGICAL BASIS OF THERAPEUTICS* 535, 546)

- vi. **Costs** - Although it is difficult to estimate the entire cost of making drug possession illegal, we know that it is extremely expensive. It is a huge waste of criminal justice resources and a financial burden on US taxpayers to criminalize drug possession and put people in jail, prison, probation, or parole. Harvard economist Jeffrey Miron calculated that the annual cost of enforcing low-level drug possession violations surpasses \$4.28 billion in a 2010 paper released by the Cato Institute. This estimate does not account for the very high costs associated with court processing, monitoring, and incarceration. Additionally, Miron offers a breakdown of taxpayer spending on drug-related expenses by state. For example, California spends nearly \$1 billion on drugs, while Florida and Georgia each spend hundreds of millions.¹
- vii. **Social Isolation Stigma**- Even in the absence of any obvious bad effects linked to their drug use, people who are stigmatized for their drug use may experience social rejection, labelling, stereotyping, and discrimination, which may include being refused treatment, housing, or work opportunities.

4. TREATMENT AND REHABILITATION AS ALTERNATIVE TO PUNISHMENT

There are a number of benefits which can be derived from decriminalising offences related to drug use. Such positive contrast can be seen by a drug decriminalization policy as follows:

- i. Lowers the amount of people who are detained, imprisoned, or otherwise brought into contact with the legal system, saving individuals, their families, and communities from the numerous negative effects of drug-related arrests, incarceration, and the permanent stigma associated with having a criminal record.
- ii. Reduces inequities in the criminal justice system caused by race, ethnicity, and financial status.
- iii. Increases the efficiency of scarce public health resources in terms of cost.
- iv. Modifies the present law enforcement incentive program and reallocates funds to stop violent and serious crimes.
- v. Fosters an environment where those who use drugs excessively are motivated to get help.
- vi. Enhances the results of treatment (where necessary). Removes barriers to the implementation of evidence based practices to reduce the potential harms of drug use, such as drug checking (to test for adulterants in illicit substances).
- vii. Strengthens linkages between law enforcement organizations and the communities they are tasked with serving and protecting.
- viii. The most of drug users who use drugs problematically do not require the use of the criminal justice system to bring them into treatment. Furthermore, research indicates that the majority of users of so-called "hard drugs," such as cocaine, heroin, and methamphetamine, never develop an addiction, despite the widespread belief that these substances are more addictive than others. However, the best way to keep those who do safe is to provide community-based treatment outside of the criminal justice system.²
- ix. Decriminalization has been implemented in a number of other nations, most notably Portugal. A complete decriminalization program was implemented by Portuguese lawmakers in 2001, which abolished criminal sanctions for minor drug possession and usage and reclassified these offenses as administrative infractions. In Portugal today, there are no drug-related arrests or incarcerations, a large number of individuals are undergoing treatment, and the prevalence of drug overdoses and HIV/AIDS is declining, all without appreciable rises in either crime or drug use rates.

5. TRADITIONAL ROLE OF THE PROSECUTION

The Indian Constitution's 7th Schedule, List III, gives both the federal government and the states the authority to enact laws on prosecution. Of course, the Indian Constitution contains no explicit provisions for prosecution. The position of prosecutor is mandated by law. The position of Attorney General or Solicitor General of India is not guaranteed by the constitution. States, however, have an obligation to safeguard societal interests. In

¹ <https://www.drugpolicy.org/sites/default/files/documents/Drug-Policy-Alliance-Time-to-Decriminalize-Report-July-2017.pdf> last accessed on 10.06.2019

²<https://www.drugpolicy.org/sites/default/files/documents/Drug-Policy-Alliance-Time-to-Decriminalize-Report-July-2017.pdf>. Last accessed on 16.06.2019

addition to representing the State in criminal courts, prosecutors also serve to safeguard the rights of victims. Thus, prosecutors have an indirect duty to uphold the state's interests.¹

The prosecutor's primary responsibility is to make sure that justice is served, not to relentlessly pursue a conviction regardless of the facts. The perfect public prosecutor doesn't care about getting people convicted or appealing the state government agencies that they interact with. He or she needs to view themselves as justice's agents. A public prosecutor shouldn't appear to be hankering after or grabbing at a conviction." The goal of a criminal trial is to ascertain the accused person's guilt or innocence; a public prosecutor's role is to represent the State, not any single party. The accused parties must be prosecuted in the most equitable manner possible. The State is pursuing the case solely to safeguard the community, not with the intention of exacting retribution. Therefore, "a seeming eagerness for, or grasping at a conviction" should not exist.

In Jitendra Kumar@ Ajju vs. State (NCT of Delhi) it was observed that "In the Criminal Justice System this role is performed by the Public Prosecutor on behalf of the State."² It has been said that the Public Prosecutor is a Minister of Justice who is essential to preserving objectivity and integrity in the sphere of managing criminal justice. In *Habeeb Mohamad v State of Hyderabad* it was held that "irrespective of the side of the case, the Prosecutor should bring before the court, all the angles of the case for and against an accused. Prosecutor's job is not limited to make strong prosecution case but it extends to bring other side of the case before the courts too."³

Section 321 of the Criminal Procedure Code, 1973 is also relevant in the context where till the time such alternative approach discussed above is not being implemented, withdrawal of minor prosecution can serve as a better solution to the problem. As previously stated, it allows the public prosecutor or assistant public prosecutor in charge of a case to withdraw from prosecution at any point before the verdict is rendered, provided that the court gives their consent. The statute gives the public prosecutor in charge of the case this authority, which they must use for the benefit of the administration of justice. Without a doubt, the public prosecutor's role is tied to a public goal, vesting the officer with the duty to work solely in the benefit of the administration of justice. In the case of *Koli Nana Bhana and others v. State of Gujarat* it was held that "the decision of withdrawal of prosecution lies with the Prosecutor engaged in the case. This is the Prosecutor's exclusive prerogative which can take initiative for withdrawal if the case is fit for withdrawal of prosecution as per existing provisions."⁴

6. ASSESSING ALTERNATIVE ROLE OF PROSECUTION

The American Bar Association has laid down detailed functions and guidelines for the prosecution's role and functions in the conduct of criminal trial process. In its Standard No. 3.1.1 it defines a "Prosecutor as an administrator of justice, a zealous advocate, and an officer of the court."⁵ It further states that in carrying out the prosecution role, his office must use good discretion and independent judgment. A prosecutor's overarching objective is to serve the public interest. To that end, they should act honourably and with good judgment to enhance public safety through the pursuit of appropriate criminal charges of the proper seriousness as well as the exercise of discretion to drop charges when the situation warrants it.⁶ The prosecutor must also possess the expertise necessary to examine and evaluate potential alternatives to prosecution or conviction that may be appropriate in certain situations or groups of cases, according to subrule (e) of the aforementioned rule. His office needs to be open to support neighbourhood initiatives aimed at resolving issues that derive from or are connected to criminal behaviour or alleged violations of laws inside the criminal justice system. The most important thing to understand is that he is not just a case processor; rather, he is a problem solver who must take the criminal justice system's overarching objectives into account.

¹ <https://shodhganga.inflibnet.ac.in/bitstream/10603/144597/8/chapter%20iv.pdf>. last accessed on 16.06.2019

² **Jitendra Kumar@ Ajju v. State (NCT of Delhi)**, CrI. W.P. 216/99, Delhi High Court.

³ *Habeeb Mohamad v. State of Hyderabad*, A.I.R.1954, S.C.51.

⁴ *Koli Nana Bhana and others v. State of Gujarat*, 1986 Cr. L. J. 571, p.574.

⁵ https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition/, last accessed on 17-06-2019

⁶ *Ibid*

The discretion of prosecutor can be exercised by considering the following factors:

- i. The prosecutor's doubts regarding the accused's guilt
- ii. The degree or lack of harm resulting from the offense
- iii. The offender's background and characteristics, including any voluntary restitution or efforts at rehabilitation
- iv. Whether the authorized or likely punishment or collateral consequences are disproportionate in relation to the specific offense or the offender¹.

7. THE EMERGENCE OF DRUG COURT MODEL IN UNITED STATES OF AMERICA

The researchers of the paper have focussed their research on the drug court model which has been in place mainly in United States of America where rise of the drug court “movement” is best understood in the context of the changing goals of sentencing policy in the United States in the past half century. In U.S there has been a trend moving towards rehabilitation in 1950s which led to creation of various programmes for different kinds of offences but in the late 1980s the process started declining and gave way for incarceration as the primary method of dealing with crimes. Judges would often send drug offenders for probation or imprisonment but sooner enough they would find them back again on a revocation or new charge.² Thus a need was felt to bring about a transformation in such a traditional approach to effectively deal with burgeoning problem of drug abuse and addicts.

Article 3, paragraph 4 of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 gives parties the authority to mandate that drug offenders undergo treatment, education, aftercare, rehabilitation, or social reintegration measures, either in lieu of or in addition to conviction or punishment.³

Dissatisfied with high recidivism rates, a group of justice professionals in Miami-Dade County founded the first drug court in the country in 1989. With the integration of treatment into the criminal court system, drug-problematic offenders can now receive the necessary assistance.⁴ Inmates who were released from the Washington State Department of Corrections between July 1999 and December 2003 had a risk of death during the first two weeks after release that was more than twelve times higher than that of other state residents, with drug overdoses being the leading cause of death, according to a report published in The New England Journal of Medicine. The analysis looked at more than 30,000 prison records for these individuals.⁵ Drug courts work to end this cycle. Instead of imprisoning drug offenders, these programs give them an opportunity to engage in evidence-based rehab.

UNODC Report has defined Drug Courts as “courts that deal with drug-related offences and offenders in new procedural ways that aim to stop future criminal behaviour through court directed treatment and rehabilitation programmes. In dispensing justice, the judge is assisted by an integrated multidisciplinary team of professionals committed to the same common goal.”⁶ Thus the drug court team includes judges, drug court coordinator, prosecution, defense attorney, team of doctors etc. to effectively make this treatment based alternative work.

8. ROLE OF PROSECUTION IN DRUG COURT TREATMENT AND REHABILITATION OF DRUG ADDICTS

The U.S. Department of Justice (DOJ) established a Drug Courts Program Office in 1995 to aid in the funding and operation of the numerous local drug treatment courts that were sprouting up across the nation. Defining Drug Courts: The Essential Elements was a well-known report released in 1997 by the Drug Courts Program

¹ Ibid

² The Drug Court Judicial Benchbook, National Drug Court Institute, Bureau of Justice Assistance, U.S, February, 2011.

³ United Nations, Treaty Series, Vol. 520, No. 7515, https://www.incb.org/documents/Publications/AnnualReports/AR2000/AR_2000_Notes.pdf, last accessed on 18-06-2019

⁴ <https://www.drugrehab.com/featured/drug-courts/>, last accessed on 18-06-2019

⁵ Id.

⁶ United Nations Office on Drugs and Crime, Report Informal Expert Working Group On Drug Treatment Courts, Vienna 1999, https://www.unodc.org/pdf/lap_report_ewg_casework.pdf, last accessed on 18-06-2019

Office in collaboration with the National Association of Drug Court Professionals as part of this government project.¹ According to Key Component 2, it is the prosecuting attorney's duty to safeguard public safety by making sure that each candidate is qualified for the program and follows all drug court regulations.

The tasks and obligations of prosecutors in drug courts differ from those in criminal courts. Prosecutors in drug courts are supposed to have a therapeutic stance, be open to collaborating with other members of the drug court team and support the objectives of problem-solving courts.²

Their role can be primarily divided into three categories

1. Acting as a Gatekeeper and Developing Eligibility Criteria
2. Assessment & monitoring
3. Sanctions and Initiatives.

1. Role in developing Eligibility Criteria and Assessment

The role of prosecutor is non adversarial and they have to work with a team to develop or review the eligibility criteria. To target the optimal group and maximize cost savings and public safety benefits while preserving consistency within the participant pool, criteria needs to be grounded on research.³

2. Assessment & Monitoring

The National Drug Court Institute's (NDCI) Adult Drug Court Planning Initiative outlined core competencies in their *Core Competencies Guide* that prosecutors can consult for guidance when working in a drug court. The various competencies mentioned are:⁴

- i. Fully engages as a member of the drug court team, dedicating themselves to the program's objectives and mission and cooperating fully to make sure they are met.
- ii. The prosecutor acts as a team player in drug court, fostering a sense of unity among the members by conducting non-adversarial operations.
- iii. The prosecutor promotes suitable non-court settings (such as staffing) as a member of the drug court team, where proper incentives and consequences are in place for program compliance or lack thereof.
- iv. Assures community safety concerns through adherence to eligibility requirements in a non-adversarial setting that emphasizes the advantages of therapeutic program outcomes. Monitors offender progress to define parameters of behaviour that allow continued program participation and suggest effective incentives and sanctions for program compliance.
- v. Should possess general knowledge of pharmacology, alcoholism, and addiction and use that information to respond to compliance in a way that is therapeutically appropriate.
- vi. Need to be aware of how the offender's age, gender, and cultural background may affect their chances of success.
- vii. Supports the group's initiatives to gather local resources and educate the community.

3. Sanctions and Incentives

According to NDCI's Core Competency Guide, Core Competency 3, prosecutors need to push for sanctions that are applied right away to noncompliant behaviour. Evidence from NPC Research shows that sanctions can enhance cost reductions by 100% when they are implemented right away. In order to avoid missing opportunities to penalize non-compliant behaviour or reward complying behaviour, prosecutors should push for

¹ Drug Courts Program Office, Office of Justice Programis, U.S. Dept. Of Justice, Defining Drug Courts: The Key Components (1997), Available At <https://www.ncjrs.gov/pdffiles1/bja/205621.pdf>, last accessed on 19-06-2019

² <https://ndcrc.org/wp-content/uploads/2017/06/The-Role-of-Prosecutors-in-Drug-Treatment-Courts.pdf>, last accessed on 19-06-2019

³ Carey, S.M., Finigan, M.W., & Pukstas, K. (2008), Ex-ploring the key components of drug courts: a comparative study of 18 adult drug courts on practices, outcomes, and costs (Report No. 223853), available at

<https://www.ncjrs.gov/pdffiles1/nij/grants/223853.pdf>, last accessed on 20-06-2019

⁴ <http://www.wellnesscourts.org/files/NDCI%20Core%20Competencies%20Guide.pdf>, last accessed on 20-06-2019

a prompt response. But this does not mean that jails should be used as an alternative too often as it will again lead to increase of recidivism rates in drug treatment candidates and will negate the very purpose of such alternative treatment.

9. THE CHALLENGES AND WAY AHEAD

After assessing and thoroughly going through such detailed model in place in U.S and its success over the years to effectively deal with problem of drug addicts and treating them as victims rather than offenders raises many questions for a country like India which still cripples under the menace of serious drug abuse and drug addiction problem. As has been covered in the beginning the approach NDPS Act has been to create a strong deterrence by bringing consumption and possession under its list of offences. But the provision of Sec 64A under NDPS Act was a step in the right direction but not much has been done by the NDPS Courts and team of professionals including Prosecuting Attorneys to utilize and fully realize the potential of this section. The sections on punishment do not specify who would be sentenced to rehabilitation and who will face incarceration, despite the fact that the legislation offers drug users the option of rehabilitation. It's unclear if this rehabilitation time is regarded as a distinct kind of punishment or if it's a component of jail time. Put differently, drug users are viewed as criminals as well as victims.¹

According to a report titled "From Addict to Convict: The Working of the NDPS Act in Punjab"² written by the think tank Vidhi Centre for Legal Policy, no one who was hauled before Punjabi courts between 2013 and 2015 received a court order for de-addiction and rehabilitation. According to the study, judges and attorneys were largely unaware of this mechanism for redirecting addicts to rehabilitation, as evidenced by multiple conversations with them. Justice Mukul Mudgal who launched this study commented that the addicts being made "scapegoats" in the drug trafficking menace. *"Commercial drug dealers are hardly convicted and this is something that needs to be reversed. Deterrence as a theory does not work,"*³ As a result, it is evident that the NDPS Act has been largely ineffective and redundant in terms of rehabilitation. The reformatory goal of the act is no longer valid because to the inadequate institutional mechanisms that go along with it, such as the judiciary's training programs and vital rehabilitation systems.

The model which has been followed in US and the extensive role and guidelines laid down for the prosecuting attorneys should be seriously looked into and should form a part of its criminal justice delivery system to effectively tackle the menace of drug abuse and addiction. In drug courts, prosecutors have to strike a special balance between safeguarding public safety and developing uniform eligibility standards that optimize cost-saving measures. Prosecutors, who are frequently viewed as the gatekeepers, can foster teamwork among other drug court team members by modelling leadership and dedication to the program.

¹ <https://www.thejakartapost.com/news/2014/03/20/should-drug-addicts-be-jailed-or-rehabilitated.html>, last accessed on 20-06-2019

² <https://static1.squarespace.com/static/551ea026e4b0adba21a8f9df/t/5b7e56b5f950b78b15b84869/1535006403282/FATC+Volume+1+English.pdf>, last accessed on 20-06-2019

³ <https://www.ndtv.com/india-news/drug-addicts-in-punjab-being-sent-to-jail-and-not-rehab-study-finds-1906384>, last accessed on 20-06-2019