

BEYOND THE HAZE: ANALYZING DRUG PENALTY LAWS IN SOUTH ASIA AND THEIR EFFICACY IN REDUCING ILLICIT USE

Maahin Kant

Singapore American School, Singapore

DOI: 10.46609/IJSSER.2020.v05i10.030 URL: <https://doi.org/10.46609/IJSSER.2020.v05i10.030>

ABSTRACT

Drug penalty law and policy remains a topic of concern around the world. While there is increased awareness of the importance of harm reduction and rehabilitative policies, countries in South Asia continue to adopt zero tolerance policies to penalize drug use, which focus on imprisonment and the death penalty. While human rights groups and civil society have been crucial in changing the discourse in these countries, the law remains woefully inadequate in addressing the root causes of drug abuse with a sole focus on deterrence. Given this pertinent issue, this paper will analyze the cases of India and Singapore as case studies for South Asia, and the legal developments with respect to drug penalty laws in these countries. Upon comparing and contrasting the two countries, the paper will pose policy recommendations drawing from international best practices and literature on addiction, and suggest the merits of reforming these laws in a direction away from harsh and punitive measures.

Keywords: Drug, Health, abuse, Illicit, SAARC

Introduction

Drug laws in South Asia leans heavily towards punitive measures. Drug policy in South Asia is based on a punitive legislation that leans heavily on incarceration and the death penalty for people involved in drug offences (IDPC, n.d). Under the framework of the South Asian Association for Regional Cooperation (SAARC), the SAARC Convention on Narcotic Drugs (1990, in effect 1993) broadly signaled the need for cooperation, information exchange and common legal frameworks to tackle drug issues in the region. Yet weak institutions, inadequate funding, regional animosity, and armed conflict have all played a role in the failed realization of this Convention (IDPC, n.d).

All countries in the South Asian region have zero tolerance policy and legislation. However, there has been criticism of these policies due to evidence that a zero-tolerance approach to drugs

does not work. This paper will analyze drug penalty laws in India and Singapore as comparative cases, and provide a review of the advantages and disadvantages of these countries' effectiveness in reducing illicit drug use. The paper will further review jurisprudence, international best practices, and finally pose policy recommendations for changing the approach from zero tolerance to one of harm reduction and drug education, and the scope for improvement.

Background

In India, passage of the Narcotic Drugs and Psychotropic Substances (Amendment) Bill increased the punishment for the illicit possession of small quantities of drugs from a maximum of 6 months imprisonment to 1 year. Drug use is also punishable by up to 6 months or 1 year imprisonment and/or a fine (IDPC, n.d). Although drug dependent people can choose to undergo treatment instead of prosecution in India, the lack of prioritization and earnest application of this treatment provision by courts has meant that few people, if any, have benefited from this mechanism (IDPC, n.d). In 2011, the Bombay High Court ruled that Section 31A of NDPS Act that imposed mandatory death sentence for a subsequent conviction for drug trafficking "unconstitutional" (Bhatia, 2018). The amendment of the act in 2001 prescribed punishment according to the drug and quantity seized and classified the quantity of drug seized into "small" or "commercial" (Bhatia, 2018). In 2014, Section 31 and 31A were also amended with certain modifications, including making "death sentence" optional (Bhatia, 2018).

Singapore by far has the toughest drug laws in the world. The country's strong and determined hold on the Misuse of Drugs Act has implemented a penalty for even possessing a small amount of illegal narcotic substance (STA Law Firm, 2019). In fact, the country advocates for execution if one is found in possession of a large quantity of drugs. As per the Misuse of Drugs Act, if an individual is found to have been in possession of an illegal narcotic substance or a large amount of drugs, then the individual will be presumed to be trafficking the said drug (STA Law Firm, 2019). As per the drug laws in Singapore, the burden of proof would lie on the defendant to prove his innocence, not on the government (STA Law Firm, 2019). Persons caught with at least half an ounce of heroin, at least 1 ounce of morphine or cocaine, or at least 17 ounces of marijuana are presumed to be trafficking in drugs and face a mandatory death penalty (Victor, 2017). Between 1991 and 2004 alone, 400 people were hanged for drug trafficking in Singapore (Victor, 2017).

However, there is evidence to suggest that such harsh punitive measures do not have the desired effect on reducing drug consumption or drug trafficking, as well as only serving to disproportionately affect minority communities. For example, studies conducted by anti death penalty activists in Singapore show that there is extremely little evidence that Singapore's 'war

on drugs', will prevent any others from being recruited into drug syndicates, or abusing drugs themselves (Han, 2016). As long as there are poor, under-served and vulnerable communities, drug lords will enjoy a steady supply of hapless young men and women to use as mules (Han, 2016). As long these mules are executed, we are shifting focus and resources away from the greater task of education, advocacy, rehabilitation and social justice that is truly important in addressing the problem (Han, 2016). This also wreaks havoc on the minority communities where most of the drug economy is focused, and consequently increases the proportion of the minority population which becomes incarcerated.

In addition, it is important to note the lack of rehabilitation facilities within prisons themselves, for those incarcerated due to drug offences. For example in India, drug dependent individuals comprise about a significant percentage of admissions in Tihar Jail, New Delhi, one of Asia's largest jails (UNODC, 2005). The majority of these are primarily heroin users who inhale, although IDUs have also been reported in sizable numbers. Most are long-duration drug users (more than five years) and some have histories of multiple arrests (UNODC, 2005). Since the universal mandate of prisons is rehabilitation of convicts and safe custody of remand prisoners, the prison staff is more interested in the safe custody of the latter (UNODC, 2005). The long judicial process increases the exposure of prisoners in remand to the risk of drug abuse (UNODC, 2005).

The primary rationale in the jurisprudence behind criminalization of drug possession is that it will serve as a deterrent for both traffickers and consumers. However, there is ample literature to show evidence that deterrence does not effectively solve the issues of drug abuse and trafficking. What is key is addressing the systemic issues of lack of education, awareness and lack of access to resources and employment. This is what often pushes society to build an economy based around drugs. For example, a report by the AIIMS in 2019, highlights that a small proportion of people who use substances in a harmful or dependent pattern end up receiving treatment, and a higher proportion seek religious help (AIIMS, 2019). A small proportion of people go to hospitals or NGOs, or other places (AIIMS, 2019). Therefore, the statistics indicate that there is a lack of awareness among the population with respect to arenas for help, and there is little effort on the part of state governments to effectively prevent these situations from arising. The report recommends scientific and evidence based treatment, as well evidence based substance abuse prevention programmes for younger people (AIIMS, 2019).

The international experience with harm reduction based education programs has been overwhelmingly positive, and has shown success in vulnerable communities which are most susceptible. It is of the foremost importance that there be a coordinated strategy in the country, with respect to drug education (Ratnayake, 2011). The way forward for the drug education

curriculum is scientific, evidence based approaches that do not rely on emotional or simply abstinence based appeals (AIIMS, 2019; Ratnayake, 2011; Tandon, 2015; UNODC Vienna, 2004). The curriculum should not present information about drugs and drug use in a way that normalizes drug use or experimentation, but at the same time, such resources should not exaggerate or misrepresent the dangers of drug use (UNODC Vienna, 2004). An approach of reshaping the environment of norms and expectations and constructing caring communities, has shown promise. Programmes in Sri Lanka for example, have attempted to change the norms and expectations related to drug use by individuals, sub-groups and communities through self examination, critical thinking, and active participation (Ranaweera and Samarasinghe, 2006).

Despite this, both India and Singapore continue to focus on the rationale of deterrence – both in laws and drug education programs. In the next section, this paper will highlight these inadequacies and the adverse effects that arise from the same.

Discussion

There is still a lack of a national drug education curriculum in India despite Supreme Court orders. In 2016, the Indian Supreme Court directed the Centre to put a national plan in place to curb the rising case of drug abuse among school children. The court ordered the center to rehaul the curriculum in schools to make children aware of substance abuse. The decision was passed on a public interest litigation filed by Bachpan Bachao Andolan, the organization of the Nobel laureate Kailash Satyarthi. However, this direction from the Supreme Court has not in any way been implemented (Financial Express, 2016). The Draft National Education Policy of 2019, does not address the issue of drug abuse in detail at all (Ministry of Human Resources and Development, 2019).

There has been some progress in terms of making the death penalty an optional punishment, which has been welcomed by activists in the field (Bhatia, 2018). In this respect, there is a contrast between India and Singapore. India does seem to be moving towards accepting the need for drug education, and harm reduction (IDPC, n.d). For example, the aforementioned report by AIIMS states that contrary to popular implementation, the best prevention strategies are those which are based on scientific evidence, and which involve working with families, schools, the wider community, and connecting adolescents to resources, with peer led interventions (AIIMS, 2019). However, in Singapore, there seems to be no movement towards the removal of the death penalty even though the government itself has stated that there has been an increase in drug smuggling despite this (Ungku and Daga, 2019). In fact, the Singapore government explicitly rejects harm reduction while India at least has a superficial commitment to the same. In May 2016, at a UN General Assembly on dealing with the world drug problem, some countries argued

for a shift from criminalizing drug use to a focus on the health of drug users (Chok, 2017). Law and Home Affairs Minister, K Shanmugam, rejected this as an unsuitable model for Singapore the perceived “social and final costs on the state and its taxpayers”, which would be “unacceptable to the majority of Singaporeans”, especially since about “80 per cent of our local inmate population are either drug addicts or have drug antecedents” (Chok, 2017; Ungku and Daga, 2019).

Therefore, there is public support due to a discourse that is based on punitive measures. It is crucial that this discourse changes, both among the government and the people (Ungku and Daga, 2019; Chok, 2017). International law says that the death penalty can only be used for the “most serious crimes”, like murder. Drug crime does not meet that threshold: UN bodies have repeatedly said that drug crime falls short of the “most serious crimes” (Pinto, 2015). There is no evidence that the death penalty is more effective at deterring drug crime – or any other crime – than a prison term (Pinto, 2015). Those sent to death row for drug offences are statistically most often from ethnic minority groups, or low-income, less-educated households. Many of the families are broken or dysfunctional in some way: estranged parents and abusive environments (Han, 2016).

There are numerous examples of the trade in drugs thriving in the face of the most draconian penalties, for the simple reason that it is the poor and replaceable ‘mules’ and runners who are likely to be caught and executed, while the major dealers are immune to prosecution and bribe or shoot their way out (Addiction Editorial, 2009). Not only is there a dearth of tangible evidence as to efficacy, but a large body of research on the general issue of deterrents suggests strongly that likelihood of detection is a more important deterrent than intensity of punishment (Addiction Editorial, 2009).

Conclusion

Future law and policy in Asia and especially harsher countries must be focused on rehabilitation and drug education and awareness programs that address the roots of the causes of both addiction and involvement in the drug economy. With the legalization of drugs such as marijuana in several parts of the world, the future of inclusive drug education may be changing. There is now awareness on the effects of simply prohibiting drugs, and how it does not address the concerns of preventive education or rehabilitation (Addiction Editorial, 2009). There is awareness that drug addiction is to be treated as a disease, rather than simply imposing punitive measures on drug users.

Society might prefer to imagine that people offend because they are inherently malicious, but we more often than not see how different socio-economic circumstances create communities or

individuals more vulnerable to being both offenders and victims (Han, 2016). It is important that there be a change in public opinion, through education even at the primary level (Han, 2016). This could possibly be achieved through inter-country cooperation in the South Asian region, and a great involvement of the SAARC. In practice, SAARC does not play an active role in the region and has recently been relatively dormant (IDPC, n.d). International organisations and civil society have played a distinctive role in promoting evidence and human rights-based policies, rather than traditional harsh punitive approaches in the region (IDPC, n.d).

Thailand is considering alternatives to punishment in the drug trade, shifting its policy paradigm towards a public health approach (Victor, 2017). Myanmar is also reviewing its drug law that considers removing lengthy prison sentences for people who use drugs and replacing them by prevention, treatment, rehabilitation and care (Victor, 2017). If the SAARC were to take a more active role in information sharing, countries like these as well as India and Maldives which are moving towards harm reduction can share the advantages of such a framework with countries like Philippines and Singapore which have harsh policies.

Finally, it is crucial that there be more research and case studies conducted specific to the South Asian context, as most of the research and literature is from Western countries. Only from a more intersectional and contextual perspective, will it be possible to develop effective policy.

References

- Bhatia, V, (3 July 2018), 'Death penalty for drug crimes: How the law changed over time', The Indian Express, <https://indianexpress.com/article/india/death-penalty-for-drug-crimes-how-the-law-changed-over-time-5243423/>
- Chok, S, (2017), 'Singapore's War on Drugs: A Historical Overview', Lee Kuan Yew School of Public Policy at the National University of Singapore, https://lkyspp.nus.edu.sg/docs/default-source/case-studies/20180223_singapores_war_on_drugs_final.pdf?sfvrsn=5ec9c0b_2
- Editorial, 'Drug trafficking: Time to abolish the death penalty', *Addiction*, Vol. 104
- Han, K. (18 May 2016), 'I discovered the truth about Singapore's 'war on drugs'. Now I campaign against the death penalty', *Open Democracy*, <https://www.opendemocracy.net/en/how-discovering-truth-about-singapore-s-war-on-drugs-led-me-to-campaign-to-abolish-death/>
- International Drug Policy Consortium, 'South Asia', <https://idpc.net/policy-advocacy/regional-work/south-asia>

Ministry of Human Resources and Development, Draft Education Policy, 2019

Ministry of Social Justice and Empowerment, Government of India and All India Institute of Medical Sciences, 'Magnitude of Substance Use in India', 2019

Pinto, S, (9 October 2015), 'Is the Death Penalty the Answer to Drug Crime?', Amnesty International, <https://www.amnesty.org/en/latest/campaigns/2015/10/is-the-death-penalty-the-answer-to-drug-crime/>

Ranaweera, S., Samarisinghe, D., World Health Organization, Regional Office for South East Asia, 'Prevention of Drug Use in Schools', 2006

Ratnayake, Y., 'Prevention of Drug Abuse in South Asia', United Nations Office on Drugs and Crime, 2011

STA Law Firm, (20 February 2019), 'Singapore: Laws and Regulations on Illegal Drugs', Mondaq, <https://www.mondaq.com/food-and-drugs-law/782442/laws-and-regulations-on-illegal-drugs>

Tandon, T., 'Drug Policy in India', International Drug Policy Consortium, Briefing Paper, February 2015

Ungku, F and Daga, A., (31 July 2019), 'Singapore says drug smuggling worsens, even as hangings rise', Reuters, <https://in.reuters.com/article/singapore-law-drugs/singapore-says-drug-smuggling-worsens-even-as-hangings-rise-idINKCN1UQ28I>

United Nations Office on Drug and Crime, Vienna, 'School Based Education for Drug Abuse Prevention', 2004

UNODC, (15 September 2005), 'South Asia Regional Profile: India', [https://www.unodc.org/pdf/india/publications/south Asia Regional Profile Sept 2005/10_india.pdf](https://www.unodc.org/pdf/india/publications/south%20Asia%20Regional%20Profile%20Sept%202005/10_india.pdf)

Victor, P, (5 December 2017), 'A review of Southeast Asia's drug policies, The Asean Post, <https://theaseanpost.com/article/review-southeast-asias-drug-policies>