

## Traffickers, peddlers, mules or users?

At a Cabinet meeting on July 2, the Punjab government recommended to the Union government the death penalty for first time offenders convicted for drug trafficking and smuggling. But the assumption that harsher measures can help deal with the State's drug problem is flawed. Deterrence by harsh punishments has consistently failed, especially in the context of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

### High rate of conviction

The law on drugs is covered by the NDPS Act. The Act's primary objective is to deter drug trafficking. It uses every trick in the book to achieve this: strict liability offences, mandatory minimum sentences, even the death penalty for certain repeat offences, to name a few. The system has responded to the law by maintaining a high rate of conviction and imprisonment. In 2015, 41.7% of all prisoners in Punjab were in jail for various offences related to this law. The conviction rate recorded for NDPS cases in Patiala for the same year was 90.7%. The comparative conviction rate under the Indian Penal Code was 30.7%. But Punjab continues to be plagued by drug-related deaths, as recently as June when 23 persons died of drug-related causes.

The death penalty was introduced in the Act in 1989, to deter narco-terrorism. The legislators even at that time believed that the only way to tackle the growing drug menace was to incorporate the harshest possible punishments in the law. The law also provides a mandatory minimum sentence of 10 years for offences involving commercial quantities of drugs. This determination is based on the assumption that people found with commercial quantities of drugs are drug traffickers.

But there's a catch. An executive notification passed by the Department of Revenue in 2009 led to a major change in how commercial quantities under the Act were determined, creating a situation where many offences involving commercial quantity were, in fact, not trafficking offences at all. This notification assigns punishment based on the weight of the whole drug and not just pure content. As a result, sentencing in pharmaceutical drug cases changed drastically across Punjab. A case in Patiala where unauthorised possession of 20 bottles of cough syrup led to a 10-year prison sentence drives home this claim. Thus, given how the law is interpreted, it is hard to say whether the people imprisoned are traffickers, peddlers, mules or users.

The law also seeks deterrence through strict liability provisions. Under the law, proving possession alone is sufficient, the prosecution does not have to prove intent to lead to conviction. Since intent is harder to prove than a criminal act alone, strict liability ensures higher convictions. This has, predictably, led to another predicament. The police in Punjab follow a template charge-sheet format, just to prove possession. They rarely, if ever, examine the intent of the criminal act. The way investigation is conducted right now, it is impossible to tell whether the person is a peddler or smuggler, or an addict feeding his habit.

### Playing to the gallery

The Cabinet's proposal to make the law even harsher is an attempt to play to the gallery. It may alleviate people's concerns for the time being, but it will not yield the results the state as well as its people so desperately seek. Instead, the law and the state need to take the opposite approach. To begin with, to ensure that traffickers are caught instead of users, the law must make intent an ingredient of offences under the NDPS Act. The burden of proof should be on the prosecution to prove that the accused possessed the drug for a particular purpose. Possession alone should not be sufficient to constitute an offence under the Act.

The Act is also blatantly unforgiving of anyone found in possession of any drug. Section 27 of the Act makes consuming any narcotic drug or psychotropic substance a criminal offence. Criminalising addiction stigmatises it, which automatically inhibits addicts from coming forward for treatment. The state should consider decriminalising addiction and developing an effective treatment strategy by consulting experts, partner agencies and users, and allocating adequate resources. The Punjab government must assess its infrastructural needs and ensure that they are met.

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