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Parliament passes the NDPS (Amendment) Bill, 2014: many gains; some losses

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The [Lawyers Collective](#) welcomes the passage of the Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 2014 ("[NDPS](#)") by Parliament late last week. The amendments make important, path breaking changes for medical access to narcotic drugs by removing barriers that date back to 1985, when the Act was first introduced. The amendments also include provisions to improve treatment and care for people dependent on drugs, moving away from abstinence oriented services to treating drug dependence as a chronic, yet manageable condition.

Drugs for medical use

India is one of the leading producers of morphine, yet patients in the country could not access it owing to the stringent licensing requirements under the NDPS Act and Rules framed by State Governments. Statistics reveal that the medical use of morphine declined by 97% after the NDPS Act came into force.

This will now [change](#) as Parliament has adopted a new category of "*essential narcotic drugs*" in section 2(viia) of the Act – a list, which the Central Government can notify on the basis of expediency in medical practice. Drugs identified as essential will be subject to Central Rules under section 9(1)(a), which will apply uniformly throughout the country, bringing to an end the unwieldy and inept practice of obtaining multiple State licenses for possession, transport, purchase, sale, distribution, use and consumption.

The amendments broaden the object of the NDPS Act from containing illicit use to also promoting the medical and scientific use of narcotic drugs and psychotropic substances. The language incorporated in section 4, which is an overarching provision, reflects the principle of 'balance' between control and availability of narcotic drugs, which is at the heart of international drug control but has eluded the NDPS Act so far. This widening of scope, it is hoped, will pave the way for more research on the beneficial use of narcotics, which up till now, remained out of bounds for the medical and scientific community due to the overtly prohibitive nature of the law.

Importantly, medical use has not been specified and could include a variety of medical conditions, besides drug dependence and pain relief.

Health and rights of *people who use drugs*

Other salutary changes have been introduced in section 71, which significantly impact the health and rights of people who use drugs. The NDPS Act now allows for “*management*” of drug dependence, thereby legitimizing opioid substitution, maintenance and other [harm reduction](#) services. Secondly, it authorizes the Government to “*recognize and approve*” treatment centres, which currently operate without license or accreditation, and inflict violence and torture on drug users. The amendments will allow for instituting evidence based and human rights compliant standards for [drug treatment](#) facilities, whether public or private.

Sentencing

The latest amendments introduce some changes in penal sentencing for [drug offences](#). Sentencing under the NDPS Act is dependent on the quantity of the drug found, with the scale of punishment varying from a maximum of 6 months for ‘small quantity’ to 20 years imprisonment for a first offence involving ‘commercial quantity’. The NDPS (Amendment) Bill, 2011 had proposed language that defined ‘small’ and ‘commercial’ quantity on the basis of the total weight of the contraband as opposed to the actual content of the narcotic or psychotropic drug in the seized substance. This would have led more people including persons who use drugs to be sentenced for ‘commercial quantity’, especially since street drugs are heavily ‘cut’ and rarely ever seized in pure forms. These provisions do not form part of the Bill cleared by the Parliament.

Another important change is the Parliament's decision to recast the death penalty, which, until now, was mandatory for a subsequent offence involving a certain quantity of drugs under section 31A, as an alternative to imprisonment for 30 years under section 31. This is a welcome step but falls short of international human rights standards and constitutional principles that restrict the imposition of the death sentence to the ‘most serious’ and ‘rarest of rare’ crimes. Drug offences do not meet this threshold and should not attract capital punishment at all.

On the flip side, the amendment has increased the punishment for small quantity offences from a maximum of 6 months to 1 year imprisonment. Consumption of drugs continues to be punishable. This is regrettable as Parliament had the opportunity to review and reform punitive provisions against people who use drugs. In the last decade or so, a growing number of countries have moved towards the full decriminalization of use and possession of drugs, with no reported negative consequences on individuals and society. Some are boldly creating legalized markets for the distribution, sale, possession and use of certain drugs. The NDPS amendments seem regressive and out of step, against the current of international [drug policy](#) reform.

Other changes

The amendment opens the way for private sector involvement in the processing of opium and concentrated poppy straw.

It also offers some protection to persons engaged in licensed drug activities by raising the rank of officers who are authorized under section 42, to search and arrest license holders for alleged NDPS violations.

Parliament has also adopted changes to strengthen the forfeiture of property of persons arraigned on charges of drug trafficking.

Process of reform

The NDPS (Amendment) Bill 2014 was strongly influenced by recommendations of the Standing Committee on Finance, which reviewed the NDPS (Amendment) Bill, 2011 in its 50th report of March 2012. Civil society and sections of the pharmaceutical industry also advocated for change.

The Lawyers Collective made extensive written and oral submissions on the NDPS (Amendment) Bill 2011 to the Standing Committee on Finance and subsequently worked with palliative care activists and the Department of Revenue, especially on medical access to narcotics.

For more information, please visit <http://www.lawyerscollective.org/vulnerable-communities/drug-use/ndps-amendment-bill-2011.html>