

Seeking Rehabilitation and Treatment for Drug Dependents under the Drug Court of Maldives

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Abstract— This qualitative study looks into the Maldives, a facing a drug epidemic with a high number of people requiring drug rehabilitation treatment and having had implemented a new drug act with new institutions to address the issue of drugs and to ensure its treatment, including the establishment of the new drugs court, where opportunity for rehabilitation could be provided for everyone requiring such treatment. This study identified the procedural issues with regards to the Drug Courts mandate where it found constitutional rights issues with regards to its enforcement and in the law. The finding of this study could be utilised to address the issue of drug rehabilitation procedure of the Drug Court so that everyone requiring treatment are provided with much needed rehabilitation opportunities.

Keywords— Drug Rehabilitation, Maldives Drug Court, Treatment Procedure, Drug Law.

I. INTRODUCTION

In 2011 due to the drug epidemic Maldives was facing, a new drug law was promulgated by the parliament. This law known as the Drug Act 17/2011 was a refined and modern replacement of the previous drug law that was considered out-dated to address the drug issue. One of the main issues related to the previous drugs act was that it failed to recognise the drug issue as something that requires rehabilitation and treatment. Rather the law was only focused on criminalising aspects of drugs and had severe punishments for all drug offenses. The new drug act however, addresses these limitations in the previous law by attempting to both criminalise drug related offenses and at the same time introduces rehabilitation and reintegration models as well as the introduction of new agencies to implement the measures set out in the law. The agencies include a new National Drugs Agency and a National Drug Council. Additionally, a specialist court to deal with drug related offenses as well as to provide the opportunity for offenders to seek rehabilitation is established under this new drug act. This court is known as the Drug Court of Maldives.

II. DRUG COURT'S MANDATE

The Drug Court's mandate would oversee 3 types of offenders. These people are those who are dependent on drugs, drug peddlers and other criminal offenders who are dependent on drugs². However, anyone despite being from this category is found to be serving a sentence related committing or aiding and abetting to the commission of an act of terrorism, child sexual offense or murder, or drug trafficking and rape would be exempt from the Drug Courts mandate and their cases will not be heard at this court despite being people requiring

rehabilitation and treatment for drug addiction and dependence.

Apart from the Drug court only conducting hearings on cases related to drugs use, there are 2 primary conditions for any hearing to be conducted for any applicable case: prior to receiving a hearing, firstly the defendant should confess to the charges brought against him and secondly, the defendant should agree to any terms and conditions of the rehabilitation order set forth by the Drug Court.

Furthermore, when it comes to the mandate of the Drug Court it has to be mentioned that any case such as battery, burglary or theft and such are also allowed to be conducted within the mandate of the court if the offender who committed these offenses committed while being under the influence of drugs.

III. DRUG COURT'S PROCEEDINGS

There are several steps in the process of the Drug Court for someone who is a drug dependent seeking treatment or rehabilitation through the Drug Court should observe.

1. **Submission of the case:** In this stage the Drug Court allows cases to be submitted by the Prosecutor General or by the NDA to the court.
2. **Preliminary hearing:** Once the case is filed by the authorised agencies or bodies to the court, then a preliminary hearing will be conducted with the defendant. The purpose of the preliminary hearing is to inform the defendant of their legal rights and provide information regarding the rehabilitation program. The other important purpose for the preliminary hearing is to inform the defendant of the terms and conditions of the rehabilitation and treatment and to see whether the defendant is

willing to accept the conditions set forth by the court as well. It has to be noted that in the event if the defendant is not willing to confess to the charges brought against them and if they are unwilling to accept all the court's conditions without any objection, then the Drug Court will remove the case from the court's mandate and forward it to the Criminal Court instead.

3. **Indicative assessment:** This is an order from the Drug Court to the National Drugs Agency to perform a special assessment which would identify the drug dependence status of the defendant as well as identify the type of treatment which could be given to the defendant in the event if the Drug Court decides to allow treatment to the dependent. So, during this stage the defendant would have to attend a meeting of NDA and truthfully provide them with all relevant information required. It has to be noted that if the defendant fails to provide any information to the satisfaction of NDA then they would remove the defendant from the assessment. This will also happen in the event if the defendant sought a particular rehabilitation or treatment from NDA, as it is seen that seeking or requesting for a specific treatment is a violation and not a right of the defendant. Once the Drug Court receives the assessment report from the NDA the court could either decide to send the defendant to a Drug Offender Remand Centre or to release the defendant on bail or under a conditional release. It has to be noted that those who are found in the assessment to be not addicted to drugs or those who are mentally unfit for treatment will not be allowed treatment under the drug courts mandate.
4. **Recommendation from NDA:** It has to be noted that only If the assessment comes positive that the defendant requires drug treatment and rehabilitation by the NDA, then the Drug Court will allow the defendant a trial hearing. Otherwise the case will be forwarded to a court such as Criminal Court for trial and this will limit the defendants' access to rehabilitation even further.
5. **Pleading of the defendant:** During the initial trial hearing once the NDA's recommendation is received, the defendant is given the opportunity to plead for the criminal charges brought against him. These charges may include using drugs, to peddling charges. In this instance the defendant is required to plead guilty to the charges and also to all the terms and conditions of the Drug Court, in order to receive the offer from Drug Court for rehabilitation. Once

the defendant pleads guilty, the court will issue an order to enforcement agencies to suspend the criminal sentence enforcement against him. Otherwise upon refusal to plead guilty the defendant's case will be removed from Drug Court and it will be sent to Criminal Court for criminal trial.

6. **Rehabilitation order from the Drug Court:** The rehabilitation order issued by the Drug Court once the defendant pleads guilty is based on 5 specific conditions. Moreover, the primary contents of the rehabilitation order would have the type of treatment, the court visitation schedule along with the urine sampling visitation schedule attached so that the defendant would know the entire scope of his treatment and rehabilitation. Furthermore, additional compensatory clauses might be added at the discretion of the court if it was deemed that a victim of the defendant should receive any such compensation from the defendant. It has to be noted that during the rehabilitation stage if the defendant fails to comply with any of the terms or conditions set by the Drug Court, then the defendant will be removed from the treatment program and the suspended criminal sentence will be ordered to be enforced by the court.
7. **Completion of Rehabilitation or Treatment:** There are 2 types of sentences the Drug Court will issue, the first type of sentence is for the suspension of the criminal sentence and for the rehabilitation and treatment of the defendant. The second sentence will be issued upon successful completion of the rehabilitation or treatment program by the defendant. In this instance if the defendant completes the treatment program then his previously suspended sentence will be rescinded by the court and the person will be allowed to move back into the society as a law-abiding citizen. It has to be noted that the Drug Court could issue the second sentence with additional conditions or either completely allow the defendant to be set free. The discretion will be up to the court.

IV. DISCUSSION AND FINDINGS

There are several fundamental rights issues which are in conflict with the Constitution of the Maldives as well as the conventions the Maldives is part of when it comes to the procedure of the Drug Court. Firstly, the issue arises when the defendant is refused representation from a lawyer during the initial trial stage where a major decision upon which any rehabilitation or treatment will be offered to him would be decided. As the defendant is

required to plead guilty to the charges as well as to all the terms and conditions set forth by the Drug Court, the refusal in the law to have the defendant represented by an attorney is a major concern. One such issue is found in relation to Article 51(c) of the Constitution of the Maldives assures every person the right not to be compelled to testify against himself in any trial. Thus, any statement or confession where the defendant would not have any other choice but to confess and accept the terms and conditions of the court in order to receive the much-needed critical treatment and rehabilitation for his drug dependence condition can be deemed unconstitutional. These issues need to be addressed by the parliament and the parts of the laws that are deemed unconstitutional should be replaced and amended.

VII. CONCLUSION

Despite Maldives having a major problem with drugs and drug addiction with a high number of drug dependents requiring rehabilitation and treatment; and having promulgated a modern drug act which addresses many different aspects to address the issue and provide much needed care, treatment and rehabilitation to those needing it, by the establishment of additional agencies and a specialist drug court; the procedure in providing the rehabilitation treatment to the dependents have constitutional rights issues and constraints where those requiring treatment are failed by the system it seeks to protect due to these issues. The problem could be resolved upon allowance of proper amendment to the section of the laws related to rehabilitation and the procedures of the drug court to be amended in a way to allow a health centric rehabilitation treatment to everyone despite of their criminal background and despite having to confess to charges brought against them.

REFERENCES

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- [3] Section 36 Article a,b,c,d,e,f, Drugs Act 17/2011
- [4] Section 9, Drug Court Regulation, 2014/R-26
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- [6] Drug Court Ge Marhalaathah, 2012, Drug Court, Republic of Maldives
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