

Decriminalization of Narcotics in Jordanian Legislation: Theory and Practice

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ABSTRACT

This study delves into recent legislation in Jordan regarding the decriminalization of narcotics and traces the evolution of related legislation in the country. It explores the definition and underlying philosophy of decriminalization while examining arguments from both proponents and opponents of drug decriminalization from a jurisprudential perspective. Additionally, the research sheds light on practices that have emerged in response to the decriminalization of narcotics in other jurisdictions. The study thoroughly examines the advantages and disadvantages of decriminalizing narcotics, analyzing its potential impact on drug consumption. Finally, the researcher proposes the implementation of a gradual and partial systematic plan within Jordanian legislation to address the growing trend of drug decriminalization. The paper also provides insights into the stances of the United States and other countries on this issue and how their legislations have addressed it.

Keywords: Decriminalization of Narcotics, Drug Legalization, Positivism philosophy, Natural drugs, Synthetic drugs, Drug consumption.

1. INTRODUCTION

Psychoactive medications are compounds that alter mental processes such as perception, consciousness, cognition, mood, and emotions when consumed or introduced into the body¹. These medicines belong to a broader category of psychoactive substances, which also includes alcohol and nicotine². The term "psychoactive" may not always imply the potential for dependence, and in everyday language, it is often used without further explanation, as seen in phrases like "drug use," "substance use," or "substance abuse"³. In 1946, the Economic and

Social Council (ECOSOC) passed resolution 9(I), establishing the Commission on Narcotic Drugs (CND) to assist ECOSOC in monitoring global drug control agreements. Later, in 1991, the General Assembly (GA) granted the CND the authority to oversee UNODC. The CND's agenda comprises a normative section for treaty-based and normative functions and an operational section for UNODC governance⁴.

The notion that whatever is prohibited becomes desirable is applicable to various thoughts and ideas, including drug usage. Many countries have adopted punitive measures against drug consumption, trade, and possession, categorizing drug users as criminals⁵. Conversely, there are countries that consider drug users as victims in need of treatment rather than punishment⁵. Consequently, the focus should be on providing treatment

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and support rather than incarceration⁶. Criminalizing certain drugs can have several adverse consequences [6]. One of the most significant impacts is the empowerment of the illicit drug trade, making it difficult to regulate and control⁷.

In a Jordanian study involving cannabis and alcohol addicts, 19 participants used alcohol, while 26 used hashish. The researcher employed the Family Socialization Scale and the Attitudes Toward Drug and Narcotics Abuse Measure to achieve the study's objectives. The study revealed that addiction had the highest mean among participants, with statistically significant correlation coefficients between family socialization and addiction. Addiction also demonstrated a strong association with both authoritarian and lenient socialization patterns, and a negative relationship with democracy. Furthermore, the results indicated that family socialization patterns could predict 72% of addiction, with an R2 value of 0.520, explaining 49% of the variance⁸.

There is an ongoing debate regarding drug decriminalization, with some arguing that only drug traders should face penalties, while others advocate for penalizing drug users as well, considering them criminals. This research argues against criminalizing drug consumers in Jordan and instead proposes government regulation to mitigate potential adverse consequences.

The research presented in this paper is structured into three main sections. The first section introduces the concept of drug decriminalization and its underlying philosophy. The second section delves into the jurisprudential controversy surrounding decriminalization, exploring various commentators' perspectives. Lastly, the third section examines different legislations from various countries, particularly comparing the United States to Jordanian legislation.

According to the positivist philosophy in criminology, drug addiction should be approached from a medical perspective. This perspective views drug users as individuals in need of medical attention rather than as

criminals. While it acknowledges that some users may engage in criminal activities to sustain their drug supply, it deems it unjust to classify them solely as criminals due to their drug use⁹.

To address the issue of narcotic drugs, the New York Academy of Medicine proposed a strategy in which addicts would receive narcotics at a reduced cost under government supervision while undergoing withdrawal therapy. This approach aims to treat addicts as patients rather than criminals, ensuring they seek proper medical treatment and monitoring. By providing legal access to narcotic medications at minimal cost under strict medical supervision, the strategy aims to eliminate the need for criminal activity to obtain opioids and reduce the motivation to create new addicts. Consequently, it could lead to the disappearance of black markets associated with narcotics. This alternative approach would place strict control over narcotics on the side of law and order rather than against it¹⁰.

The philosophy of drug decriminalization is rooted in the notion that, while drug use can be harmful, it doesn't necessarily constitute an absolute evil warranting the high levels of imprisonment often associated with national "war on drugs" policies. Proponents argue that punitive measures lack a logical rationale and are disproportionate to an action that, while potentially unhealthy for the user, is typically not directly harmful or antagonistic to society. They contend that making drugs legal would prevent law-abiding businesses from being sidelined by illegal drug trade. This paper asserts that decriminalization serves to deter illicit traders from capitalizing on this lucrative market, as the added cost of prohibition can significantly reduce their profits¹¹.

Decriminalizing drugs can mitigate serious health risks from a hygienic standpoint, as it facilitates formal health supervision of drug production, distribution, and use, including safe injection practices. Instead of a blanket ban, the justice system should focus on regulation. Statistics reveal that around 25% of AIDS cases in Washington,

D.C., in the USA, before 1990, were linked to the lack of access to clean needles for drug users. The prohibition of drugs, in contrast to alcohol, represents a legal inconsistency in the USA^{12,13}.

It's important to recognize that not every opioid transforms its user into a deranged, violent individual capable of committing heinous crimes. In fact, many drugs induce lethargy rather than aggression. A nationwide legalization of marijuana in the United States could significantly reduce drug trafficking groups' earnings from drug exports, potentially by one-fifth to one-third. Consequently, banning narcotics while permitting alcohol raises legal contradictions.

The most compelling counterargument against drug decriminalization is the concern that legal access to drugs may lead more individuals, both experienced users and newcomers, to experiment with substances because they are no longer prohibited. This, in turn, could lead to increased addiction rates, as users no longer face criminal charges for drug possession or use. It appears that when something is legalized, it may become more accessible to those who desire it¹².

Opponents argue that narcotics have a very elastic demand, meaning that if drugs were legalized and their prices decreased, the quantity purchased would increase significantly¹⁴.

Many are against the decriminalization of narcotics due to their strong association with criminal activities. They believe that legalizing drugs would lead to an increase in crime rates. Research has shown that nearly half of the homicides in the United States are somehow linked to alcohol and/or drugs¹⁰. Furthermore, decriminalization alone would not eliminate the thriving underground market for marijuana, estimated to be worth \$40 billion or more in the U.S.¹⁵.

Why is decriminalization considered insufficient? Despite its advantages, decriminalization falls short in many respects, primarily because it still operates within the framework of prohibition. Consequently, it continues to

suffer from the inherent issues of prohibition, including an illegal and unregulated market, unequal enforcement of laws (regardless of the severity of the penalty) against specific groups, particularly people of color, and the presence of unregulated products with unknown potency and quality^{16,17}.

In Portugal, prior to the passing of Law No. 30/2000, there were concerns and significant criticism regarding drug decriminalization, especially from right-wing politicians, traditional societal sectors, and certain mass media outlets. Some argued that it might lead to a sudden increase in drug use and turn Portugal into a drug paradise, attracting drug tourism and foreigners who could use drugs without the risk of serious legal consequences¹¹. This research aims to investigate drug decriminalization in the context of reducing consumption in Jordan and draw comparisons with different jurisdictions such as the USA.

2. METHODOLOGY

This study provides a comprehensive review of the Convention on Narcotic Drugs and Psychotropic Substances, considering the viewpoints of both proponents and opponents of drug decriminalization. It emphasizes that the effectiveness of narcotic drug decriminalization is more pronounced at the international level rather than solely at the national level. Additionally, the study assesses the influence and patterns of comparative drug decriminalization legislation on the extent of narcotic drug consumption.

Furthermore, it is proposed that Jordanian legislation adopts a systematic and gradual approach to address the ongoing trend of drug decriminalization. This research also explores the impact of decriminalizing narcotic substances on the illicit drug usage landscape.

3. RESULTS AND DISCUSSION:

3.1. Analysis of the impact of decriminalization of Narcotic drugs on the magnitude of drug consumption:

One significant reason for decriminalization is that

when drugs are readily available, consumers may no longer desire excessive quantities due to diminishing marginal utility. This can lead to a reduction in the drug market and eventually bring an end to the fruitless war on drugs¹².

The argument that decriminalization could lead to a significant increase in drug use and a fall in prices can be countered as follows¹⁴:

1- Narcotics are considered necessities for drug users, not luxuries, making them less responsive to price increases. There is no compelling reason to assume that many people will suddenly begin using drugs solely because it is allowed.

2- Legalization or decriminalization does not negate the recognition of the dangers associated with drugs.

3- Legalization or decriminalization can lead to a decrease in drug potency. With a regulated supply, people may opt for weaker and safer drugs. The combination of a regulated supply and the low elasticity of demand for drugs can help maintain consumption at a reasonable level.

The concern that legalizing drugs may not eliminate lucrative underground markets is based on the assumption that black market transactions would continue in secret to evade government price controls and taxes. It's important to note that during the Prohibition Era in the United States, alcohol was prohibited, leading to a thriving black market. However, once alcohol was legalized, the need for secrecy diminished. While wholesalers eventually faced taxes, the alcohol industry became less violent and dangerous. A similar principle could be applied to the pharmaceutical industry¹².

3.2. Trends of Comparative Legislation:

Since 2011, hemp and its derivatives containing less than 1% THC have not been classified as narcotics under Swiss legislation. However, the so-called "light cannabis" boom began in 2017 when it became legal in Switzerland to cultivate and sell unprocessed inflorescences of this plant as long as the THC level was less than 1%¹⁸.

I In 2001, Portugal decriminalized narcotics (Law no.

30/2000), resulting in significant reductions in overdose, addiction, and infection rates caused by contaminated needles. Statistics show that among Portuguese adults, there are four drug overdose deaths for every million citizens [19], compared to the European Union average of 14.8 per million in 2019¹⁸. In contrast, overdose fatalities in the United States exceeded 72,000 in 2017. If the overdose mortality rates in the United States were similar to those in Portugal, there would have been fewer than 800 overdose fatalities in that year²⁰.

The threshold amounts of prohibited drugs considered as personal possession are specified in Portuguese Law No. 30/2000. These levels primarily serve as a starting point for prosecutors to evaluate whether the person's possession of the substance is for personal use, which is decriminalized, or for trafficking, which may result in a jail sentence of one to 12 years. Drug trafficking penalties may be as high as 25 years in "aggravating circumstances," which include trafficking as part of a criminal organization and causing death or severe bodily injury²¹.

Several other nations, including the Czech Republic, Spain, and the Netherlands, have had successful experiences with decriminalization. Additionally, countries like Canada, France, Georgia, Ghana, Ireland, and Norway are now exploring methods to abolish the criminality of personal drug use²¹.

In the United States, a few states, such as Colorado, Virginia, and Washington²², have legalized natural marijuana for recreational use. For example, Colorado legalized recreational marijuana under Amendment 64, allowing personal use and growth within certain limits. Anyone aged 21 and over can legally possess up to an ounce of marijuana, which can be purchased at licensed stores¹⁹.

Furthermore, some countries have legalized the trade of marijuana. Uruguay became the first country in the world to legalize and regulate the marijuana trade in 2013, and Canada became the second country to do so, passing marijuana legalization in 2017 and implementing

legislation to permit a national marijuana market. Additional legalization proposals are under consideration in several other countries²³.

Nevertheless, decriminalizing narcotic drugs only at the national level may hinder the goal of effectively controlling the drug market. It is argued in this paper that decriminalizing drugs in isolation from other countries, particularly neighboring countries like those in the Middle East, would be unnecessary. This is because it could create imbalanced conditions for the flow of drugs across borders, making drug control and regulation challenging. In contrast to policies aimed at reducing narcotics, this approach assumes that reducing narcotics shipments is influenced by disparities in drug policies. Therefore, the current Convention on Narcotic Drugs and Psychotropic Substances needs to be reviewed from the perspectives of both opponents and proponents of decriminalization.

3.3. The trend of Jordanian legislation concerning the decriminalization of Narcotics:

Jordan participated in the United Nations conference to approve the Single Convention on Narcotic Drugs at the United Nations headquarters in 1961. Furthermore, Jordan signed its final document and the protocol of amendments to this Convention in 1972. Jordan also ratified the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances^{24,25}.

Jordan continues to fulfill its international obligation to combat illegal drugs and psychoactive substances through national law. Jordan's Narcotics and Psychotropics Act No. 23 of 2016 and its subsequent amendments contain legal provisions that criminalize related actions, including the use and possession of narcotic and psychotropic drugs.

In 2020, there were 16,118 cases of narcotics drug abuse and possession in Jordan, while drug trafficking cases for the same year numbered 3,937. The drug crime rate per 10,000 population for 2020 was 19, indicating an increase since 2011, as depicted in Figure 1 below²⁵.

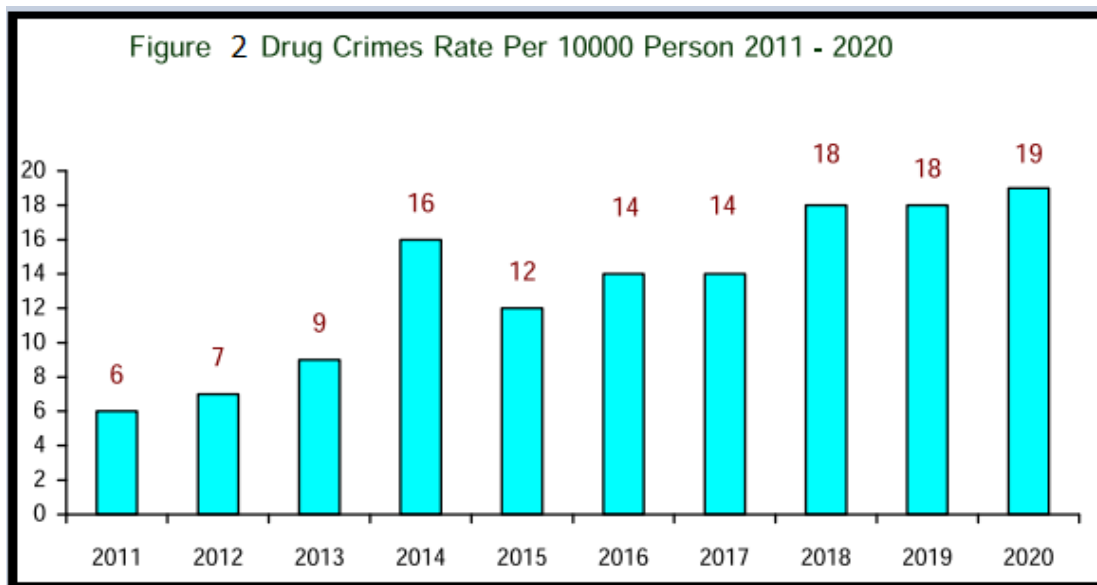


Figure 1: Drug crimes rate per 10000 persons 2011-2020 in Jordan

While full decriminalization of narcotic drugs in Jordan is not possible due to Jordan's commitment to the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which prohibits the legalization or decriminalization of all types of illicit narcotics and psychotropic substances, partial decriminalization of narcotics in Jordan has been achieved. The first indications of this appeared in the repealed Act No. 11 on Narcotic Drugs and Psychotropic Substances of 1988, which was amended in 2013. In this amended law, Section 14 for the first time prohibited the prosecution of offenders involved in narcotic drugs and psychotropic substances, stipulating that they would be transferred for treatment to a specialized narcotics control center or another hospital approved by the Ministry of the Interior, and this action would not be considered a recurrence.

This unique approach to decriminalization of drug abuse has sparked a contentious debate in Jordan. Opponents viewed it as potentially encouraging young people to try drugs. However, this exceptional provision of the law has since been revised in the current Law No. 23 of 2016. Article 9 of this law criminalizes all activities related to substances listed in the annex tables of the law, including abuse and possession with intent to abuse. Article 14 criminalizes all activities related to substances not listed in the annex tables of the law with intent to cause anesthesia or any other harmful effect on the mind. However, a first-time offense is still not counted as recidivism (Article (9)/b).

Article 9 (c) of the current Law on Narcotics and Psychotropic Substances (No. 23 of 2016 and its amendments) allows the judge to replace imprisonment for perpetrators in cases involving the consumption, acquisition, smuggling, import, export, possession, obtaining, purchase, receipt, transportation, production, manufacture, storage, or cultivation of narcotics, psychotropic substances, preparations, or plants intended for abuse. The judge may opt for alternative procedures as deemed appropriate for the individual's case, including:

- 1 .Admitting the perpetrator to a specialized clinic for

drug rehabilitation for a duration determined by a special medical committee.

2. Admitting the perpetrator to a specialized clinic for psychological and social treatment for narcotics addiction, under the supervision of a psychiatrist or social specialist.

Recognizing that Jordanian legislation views narcotic drug abusers as individuals in need of medical help rather than criminals, the current law continues to prevent the prosecution of individuals who abuse narcotic drugs and psychotropic substances or are addicted to them if they voluntarily seek treatment before arrest (Article (9)/f).

However, this paper contends that the stance of the current Jordanian Law No. 23 on Narcotic Drugs and Psychotropic Substances of 2016 and its amendments is insufficient to address the increasing issue of narcotic drug abuse. This law should encourage first-time abusers and possessors to seek assistance rather than hide to avoid legal consequences. Perpetrators of drug abuse and possession require rehabilitation, not punishment. The current law policy incentivizes them to conceal their accidental abuse or possession instead of seeking help. This paper proposes decriminalizing accidental abuse and possession for the first time in Jordanian law, as was the case in the 2013 amendment to the repealed Narcotics and Psychotropic Substances Law.

4. CONCLUSIONS

In the Middle East, decriminalizing drugs in isolation from other countries, particularly neighboring countries such as those in the Middle East, would be unnecessary. This is because it would create imbalanced conditions for the flow of drugs across borders, rendering drug control and regulation ineffective. Anti-narcotic drug legislation should be reconsidered from the perspectives of both opponents and proponents of decriminalization. On an international level, there is a need to review the Convention on Narcotic Drugs and Psychotropic Substances. Decriminalizing accidental drug abuse and possession for the first time in Jordan would represent a significant step in the right direction.

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عدم تجريم المخدرات في التشريع الأردني: النظرية والممارسة

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ملخص

تسلط هذه الدراسة الضوء على عدم تجريم المخدرات في التشريعات الحديثة في الأردن وتطور التشريعات حول هذا الموضوع، كما تنظر الدراسة في تعريف وفلسفة نزع التجريم وتبحث في كل من مؤيدي ومعارضى منع تجريم المخدرات من وجهة نظر الفقه، كما تبرز هذه الدراسة بعض الممارسات التي ظهرت نتيجة لعدم تجريم المخدرات في بعض الولايات القضائية الخارجية. نوقشت في هذا البحث فوائد ومساوئ عدم تجريم المخدرات، وتم تحليل أثر عدم تجريم المخدرات على استهلاك المخدرات، وأخيراً يقترح البحث أن تنفذ التشريعات الأردنية خطة منهجية تدريجية وجزئية لمعالجة اتجاه منع تجريم المخدرات، وتسلط الورقة الضوء على مواقف الولايات المتحدة الأمريكية وغيرها من البلدان بشأن هذه المسألة وكيفية معالجة تشريعاتها لها.

الكلمات الدالة: عدم تجريم المخدرات، تقنين المخدرات، فلسفة الوضعية، الأدوية الطبيعية، العقاقير الاصطناعية، استهلاك المخدرات .

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