Final Draft

POLICY REVIEW OF HARM REDUCTION PROGRAMS IN BANGLADESH

"Comprehensive prevention programs for PWID and their partners"

Implemented by: CARE Bangladesh, APOSH and Mukto Akash Bangladesh

of

"Prioritized HIV Prevention Services for Key Populations in Bangladesh"

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Contents

List of Tables

Acronyms

BCC	:	Behaviour Change Communication
DFID	:	Department for International Development
DIC	:	Drop In Center
DNC	:	Department of Narcotics Control
GoB	:	Government of Bangladesh
HAPP	:	HIV and AIDS Prevention Project
HATI	:	HIV and AIDS targeted intervention
HIV	:	Human Immunodeficiency Virus
HR	:	Harm Reduction
IEC	:	Information, Education and Communication
IT	:	Information Technology
KII	:	Key Informant Interview
KP	:	Key Population
NCA	:	Narcotics Control Act
NSP	:	Needle syringes program
OST	:	Opioid Substitution Therapy
PWID	:	People Who Inject Drugs
STI	:	Sexually Transmitted Infections
UNAIDS	:	Joint United Nations Program on HIV/AIDS
WHO	:	World Health Organization

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1. Introduction

1.1 Background

Globally, people who inject drug (PWID) are the most vulnerable to HIV infection. They are 22 times more likely to acquire HIV compared to other populations, mostly because of the unsafe injecting and sexual practices (UNAIDS 2019). PWID accounted for an estimated of 12% of the new HIV infections worldwide, including 13% of the HIV infections in the Asia-Pacific region (UNAIDS 2019). A systematic review in the Lancet Global Health indicates that injecting drug use is present in 179 out of 206 countries and with 17.8% HIV and 52.3% hepatitis C prevalence among the 15.6 million PWID around the world (Larney, Peacock, Leung, Colledge, Hickman, Vickerman, Grebely, Dumchev, Griffiths, Hines, et al., 2017).

Harm reduction program has been proven as an effective way of combating illicit drug. It incorporates feasible and non-judgmental sets of policies, programs, and practices that aim at diminishing the adverse health, social and economic harms associated with illicit drug use, without forcing the individual to stop using drugs (HRI, 2009; Thomas, 2005). A strong commitment to public health and human rights underlie this approach. Not only it helps protecting PWID from preventable diseases (such as HIV, HCV etc.) and death from overdose, but also helps them accessing social and health services (United Nations Office on Drugs and Crime, International Network of People Who Use Drugs, Joint United Nations Program on HIV/AIDS 2017). The UN General Assembly, the UN Commission on Narcotic Drugs, UN human rights bodies and WHO recommend a comprehensive package for the prevention, treatment and care of HIV among injection-drug users (World Health Organization , n.d.).

Comprehensive package of harm reduction program
1. Needle and syringe programs
2. Opioid substitution therapy (OST)
3. HIV testing services
4. Antiretroviral therapy
5. Prevention and treatment of sexually transmitted infections
6. Condom programs for PWID and their sexual partners
7. Targeted information, education and communication
8. Prevention, vaccination, diagnosis and treatment of viral hepatitis B and C
9. Prevention, diagnosis and treatment of tuberculosis
10. Community distribution of Naloxone

Source: WHO, UNODC, UNAIDS technical guide for countries to set targets for universal access to HIV prevention, treatment and care for injecting drug users–2012 revision. Geneva: World Health Organization; 2013. Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations–2016 update. Geneva: World Health Organization; 2016.

Despite global commitment to fight against HIV, harm reduction program is yet to achieve the satisfactory level. Among 179 (out of 206) countries around the world who have PWID, 87 countries are implementing Needle and Syringe Program (NSP) and 86 countries are

implementing Opioid Substitution Therapy (OST) (HRI, 2019). This coverage is lower in the Lower Middle-Income Countries (LMIC) than developed countries who have harm reduction program (Larney et al., 2017).

However, having harm reduction program does not necessarily ensure PWID to have access to harm reduction services. Different socio-political and legal factors restrict access to HIV services, constrain service delivery and attenuate their effectiveness (WHO 2016). Therefore, reforming policies and laws is considered one of the most critical enabler of harm reduction program. Globally, legal environment of many countries is hindering HIV response. Fear of legal entanglement due to drug use often discourages PWID to access HIV prevention and treatment services, getting HIV test and disclose their drug use or HIV status to families or partners. This results into escalated risk of transmission and impaired treatment seeking for HIV and other co-morbidities. (Global Commission on HIV and the Law, 2012 ; Global Commission on HIV and the Law, 2018). Additionally, incarceration increases vulnerability to disease; evidence shows that HIV rate is as high as 40 percent among PWID in prison (UNODC, 2017). Considering these facts, drug policy needs to be comprehensive while including harm reduction policies.

Bangladesh is one of the countries in the Asia-Pacific region that established a national harm reduction policy to tackle STIs and HIV/AIDS (NASP, 2014). CARE Bangladesh (CARE, B) commenced the first harm reduction initiative in Bangladesh which took the form of the Needle Syringe Exchange Program (NSEP), under the Project SHAKTI (Stopping HIV/AIDS through Knowledge and Training Initiatives) in 1998 with funding support from Department for International Development (DFID) (Azim, Hussein, & Kelly, 2005). The program evolved and scaled up over time though different funding cycles and with the help of different organization such as DIFID, Sector program 2004 and the Global Fund. The Global Fund operated in several cycles, such as the “Round-6” (from May 2007 to November 2009) “Rolling Continuation Channel Phase I & Phase II” (from December 2009 to November 2015), “New Funding Model” (December 2015 to November 2017) and “Funding Request” (December 2017 onwards). Currently with support of the Global Fund, harm reduction program has been serving 9,500 PWID through 21 DICs in 6 Districts in Bangladesh (Save the Children, 2020).

In the ongoing intervention in Bangladesh, almost all of the components of a “comprehensive package of harm reduction” are covered. Most of the harm reduction services are provided at Drop in Centres (DICs) which offer basic medical care, HIV testing & Counselling, abscess and Sexually transmitted Infection (STI) management, peer training, rest and recreational facilities and referral services (WHO, UNODC, & UNAIDS, 2012). Moreover, outreach services are provided in the pre-defined catchment areas determined by the DICs called “spots” and “sub-spots” where sterile needles and syringes, condoms are distributed and behavioural change communication (BCC), and satellite HIV testing sessions are organized (GF, 2017).

Since the initiation, harm reduction program in Bangladesh has come a long way with collaborative effort of the Government, international donor organizations, private sector and community self-help groups. However, similar to many countries in the world, access to harm reduction services for PWID in Bangladesh is still constrained by many socio-structural and socio-political factors, where the legal polices and environment play crucial part. No study has been conducted in Bangladesh yet that discusses about the laws and policies that impacts the implementation of harm reduction program and about beneficiary access to services in context of the Narcotic Control Act 2018. In those circumstances, a policy review work is warranted, considering the importance of understating policy status and its impact on the harm reduction service delivery.

1.2 Objectives of the policy review

The objectives of this policy review are to

- To critically understand how the existing national policies / acts/ laws / strategies of drug use are aliened/ supportive with the components of the harm reduction;
- To critically understand how the existing national policies / acts/ laws / strategies of drug use are conflicting with harm reduction program in Bangladesh;

2. Methodology

The search for required documents for this assignment was done following two methods- a) collection of documents from relevant sources, and b) online searching.

Mainly the study reviewed the policies, acts, laws, strategies from Department of Narcotic, Ministry of Health, Department of Drug Administrations, Ministry of Laws and Ministry of Home Affairs. A number of national consultation reports were also included in the review. Most of these documents are not available online. Therefore, these were collected from legal experts, relevant ministries and associated program personnel. The latest legal documents were focused for the assignment, as there has been several revisions and additions to the narcotic laws and policies. However, previous version of literatures have been collected and have also been referred to in this document, to present the initiatives taken and changes made in narcotic laws and policies of Bangladesh over the years.

The online literature search was carried out using primarily Google and Google Scholar. Several relevant key words were used to find out the most relevant articles, reports and websites. Individual and combination of the following key words were used- “harm reduction”, “people who use drugs”, “drug user”, “health rights”, “HIV prevention”, “HIV treatment care”, “narcotic law Bangladesh”, “drug policy Bangladesh”, etc. The review was focused on, but not limited to last 10 years. Relevant policies from WHO and UNODC were sought from respective websites.

Inclusion criteria

This review included literature on- (a) Narcotic Control Act of Bangladesh, (b) meetings on narcotics law of Bangladesh, (c) harm reduction, (d) legal aspect of harm reduction program for people who use drugs, (e) health and rights of drug users, and (f) current policies on illicit drug use and harm reduction. Considering this is a very specific area of concern, where available documents in country context are limited, no strict restrictions were posed in respect to the publication time of the literature/information.

Data extraction and analysis

The researcher independently reviewed all the documents found through the above mentioned process. After identification, researcher screened literatures/sources to select relevant ones. All selected documents were then thoroughly read by the researcher for synthesis. Related information was then extracted by themes and sub-themes and were included in the synthesis matrix to develop the findings section.

2. Review Findings

2.1 Overview of drug use situation in Bangladesh

As with other South-East Asian nations, Bangladesh has a long traditional history of drug use, primarily with opium and cannabis. Drug use problems began to emerge in Bangladesh in the 1980s. Injecting of heroin was first reported in the mid-1980s and, by the 1990s, had become more widely practiced especially in Dhaka and Rajshahi in the north (WHO 2010). The estimates of total drug users in the country vary, with figures ranging from 500,000 to 4.6 million. The majority of drug users are male but female drug users have also been identified, more so in recent years. Most drug users were between 18 and 30 years of age; many were married and had children. The most popular drug among PWID are buprenorphine (or other injecting opioid drugs), methamphetamine (also popularly known as *yaba*), cannabis, benzodiazepine type depressant according to the recent ethnographic study conducted by icddr'b which was published in 2020. According to the Mapping Study and Size Estimation of Key Populations in Bangladesh 2015-2016 conducted by the NASP, the total estimated number of PWID in Bangladesh ranges from a minimum of 26,186 to the maximum of 33,067. The presence of PWID female is restricted to only few districts with the total estimated number ranging from a minimum of 868 to the maximum of 1,045. However, the estimation exercise indicates that there were male PWID across the 64 districts of Bangladesh. A substantial proportion of the male PWID in Bangladesh are in the age group 10-19. The study also evident that among the number of male PWID, concentration is the maximum in Dhaka division (33%) followed by Rajshahi division (22%) and Chittagong division (17%).

2.2 Narcotics Control Act from 1990 to 2018

The Narcotics control act of 1990 which was repelled by the newly enacted NCA 2018 had many sections that directly and indirectly were in conflict with the harm reduction program, especially with the OST and NSP. The following table will outline those issues in a brief.

Table 1: NCA 1990 and Harm Reduction program

Acts that constitute offence	Sections of Narcotics Control Act, 1990	Impact on Harm Reduction (HR) interventions
Use of any scheduled Class Narcotics	9 &19 (for Punishment)	Penalizes Users (other than medical ground with permission from controlling authority)
Possessions of any scheduled Class Narcotics	9 &19 (for Punishment)	Penalizes 1.users 2.Service provider of OST
Supply of any	9 &19 (for	Penalizes

scheduled Class Narcotics	Punishment)	1. Service provider of OST
Allowing premises or equipment to use for commission of offence	21	Penalizes 1.Owner/occupiers of premises of HR programs 2.Non-availability of spaces for HR activities, specially in private sectors (fearing legal actions)
Instigating, aiding Conspiring to commit offence	25	Penalizes: 1.Provision of the knowledge on safe injection behavior and paraphernalia 2.Provision for OST 3.Peer educators/outreach workers who communicate such information to the drug users
Evidentiary and procedural provisions in the act:		
Officials can **enter and inspect premises** where narcotic are stored	36	OST clinics and other related program premises can be inspected at any time
Narcotics and Equipment used in commission of offence can be **seized**	33	Injection equipment and substitute drugs can confiscated including the communication materials
Official can **enter**, **search**, **seize** and **arrest** on apprehension that offence likely to be committed	36	1. Drug treatment and & harm reduction program can be raided at any time. 2.Clients files and program records can be confiscated 3.Progrm workers can be arrested
Person like to commit offence in a public place can be arrested	41	Outreach workers and PWID with injection equipment under constant threat of arrest.

Source: Hassan, Mahboob K. (2005)

In 1990, the Government of Bangladesh enacted the Narcotics Control Act, which gave extensive power to law enforcement to control drugs and related issues. Section 9, 13, 19, 22, 23, 25 and 36 of that act describes in details how law enforcers can be intervene in drug related issues. (Ahmed and Mahmood, 2007). The act however did not prohibit possession of injection paraphernalia (needles, syringes, bleach) but distribution of paraphernalia was not permitted under the act, as such actions can be interpreted as helping in individual to use drugs and such instigation, helping or conspiring with a person to commit a crime (i.e., drug use) constitute a

punishable offence. The act also made it illegal to let out any premises, home or transport, equipment for commission of an offence, such as instigation and conspire to commit a crime (i.e., drug use). So land owners who rent out or occupiers who lease premises used for Drop in Centres, NSPs, may potentially face legal action under the law.

Law officers could search a person, (body search and urine examination) suspected of concealing narcotics. Similarly a person likely to commit an offence (which also includes use) in a public place can be searched, detained and arrested. This power could result in the vulnerability of harm reduction program; DICs, NSP sites can be raided, and equipment or client records can be confiscated.

Narcotics Act 1990 section 9 and 19 described the provision of penalty for using, possessions and supply of some specific drugs which are as follows.

Table 2: possessions of drug and penalty according to NCA 1990

Name of drugs	**Penalty**
Heroin, Cocaine and Coca derivatives	a) If the quantity of narcotics does not exceed 25 grams, imprisonment for a term should be 2- 10 years. b) If the quantity of narcotics exceed 25 grams, death sentence or imprisonment for life
Pethidine, morphine etc.	a) If the quantity of narcotics does not exceed 10 grams, imprisonment for a term should be 2- 10 years. b) If the quantity of narcotics exceed 10 grams, death sentence or imprisonment for life
Opium, Cannabis resin or opium derivatives	a) If the quantity of narcotics does not exceed 2 kgs, imprisonment for a term should be 2- 10 years. b) If the quantity of narcotics exceed 2 kgs, death sentence or imprisonment for life
Ganja or any kind of herbal cannabis	a) If the quantity of narcotics does not exceed 5 kgs, imprisonment for a term should be 6 months- 3 years. b) If the quantity of narcotics exceed 5 kgs, imprisonment for a term should be less than 3 years- 3 years

Source: (Ahmed and Mahmood, 2007)

The vision of the Department of Narcotics Control is "*To build a drug-free Bangladesh*". To achieve the vision, Department of Narcotic Control, Bangladesh has enacted Narcotics Control Act, 2018 (NCA 2018) repelling the existing Narcotics Control Act, 1990. The NCA- 2018 has added seven chapters with 70 clauses and many sub-clauses to provide outline of the drug use, control and rehabilitation guideline for Bangladesh. In the following section the study will review current policy status in regard to illegal drug use and harm reduction program as per the Narcotics Control Act (2018) including other laws of law enforcement agencies. The main themes of the NCA- 2018 are:

a. Control of drug use;
b. Reducing supply and demand;
c. Prevention and control of drug trafficking; and
d. Running process for treatment and rehabilitation of drug use.

Treatment and rehabilitation of the drug users is only mentioned under chapter seven: miscellaneous (clause 61) and detail description is not available.

In addition to that, Narcotics Control Act, 2018 does not provide a definition of harm reduction even though it has been operating in Bangladesh for more than two decades and the ASP (AIDS and STD Program) has been a major stakeholder of this program. However, in different sections of the act talks about the necessities of drug treatment, rehabilitations, awareness, research and many issues pertinent to the addressing drug problems in Bangladesh and defined the functions and responsibilities of the DNC. For example, in the Section 6, of the Narcotics Control Act, 2018 stated eight major Functions and Responsibilities of the Department of Narcotics (GoB, 2018):

- Clause (a): To frame policies for prevention of possible harmful consequences of drugs and to take measures for their implementation;
- Clause (b): To undertake any research or survey for the collection of data and information relating to various aspects of narcotics;
- Clause (c): To frame policies relating to manufacture, supply, use, and control of narcotics;
- Clause (d): To frame policies relating to treatment and rehabilitation of narcotics addicts and to take measures for their implementation;
- Clause (e): To undertake educational and publicity measures for creating necessary public awareness about the evil effects of narcotics;
- Clause (f): To maintain liaison with all the concerned Ministries and Agencies relating to anti-narcotics matters and to coordinate all such activities;
- Clause (g): To take any measure necessary for the performance of the aforesaid functions and responsibilities; and
- Clause (h): To undertake and execute any duties imposed by government.

It shows from the clauses of the Narcotics Control Act 2018 that, the Clauses ‘a’ to Clause ‘e’ are very much related and useful functions of DNC to prevention of different types of harmful consequences of drugs. DNC may frame their relevant policies to capture the context of the drug users, collect data and may take necessary measures for the reduction of harm related to drug use. In the NCA- 2018, there are little is mention about harm reduction, treatment and rehabilitation of narcotics addicts. But, there is a detail section on ‘harm reduction’ in the Annual Drug Report Bangladesh- 2018 (DNC, 2018).

With the help of the Clause 'f', the DNC can coordinate with all the department of the law enforcing agencies, law implementing departments, ministry of health, NGOs and UN bodies to work on any issues related to drug use and its harm. It is to note that, the NCA 2018 endorses the drug prevention activities for both government organizations, and Non-Government organizations in Bangladesh, which includes all NGOs and Voluntary Organizations (VOs).

The major change that was introduced in NCA 2018 was the placement of methamphetamine in the classification of drugs. In the 1990 act, methamphetamine was categorized in type B (kha) where as in NCA 2018, it was placed in class A (ka) with provisions with provisions for severe punishment upon use, possession and etc (will be discussed later). The highlights of classification is the drugs in NCA 2018 is below:

Table 3: Classification of narcotic Drugs under Narcotics Control Act 2018

A (ka)-Class Narcotics
1. Opium poppy or any glutinous substance coming out of it. 2. Coca leaf, Cocaine or coca derivatives. 3. Any refined, unrefined or manufactured Opium or any article produced with Opium. 4. Any synthetic or artificially manufactured narcotics which is similar to opium, such as Buprenorphine, Pethidine, Meperdine, Methadone, Dextromoramide, Dihydocodeine, Meperdine-fentanyl, Pentazocaine, Hydromorphine, Omnopone, Alphaprodine, Demeral, Oxycodone, Etrophine, Lofentanyl. Alfentanyl, Alphamethyl, Fentanyl, 3-Methyl Fetanyl, Asscetrophine. Acetylmethadol, Alphacetyl-methadol, Betaprodine etc. 5. Amphetamine type stimulants such as methamphetamine etc. And etc.
B (kha)- Class Narcotics:
1. Hemp Plant, Herbal Cannabis, Bhang, Bhang plant or any article manufactured in combination with Herbal cannabis or Bhang. 2. Any other plant (except tobacco) which may be used as a source of narcotics. 3. Alcohol, all kinds of wine and liquor, rectified spirit, any medicine or liquid manufactured with rectified spirit, beer or any liquid containing more than 5% alcohol. 4. L.S.D. or any article containing L.S.D. And etc.
C (ga)- Class Narcotics:
1. Tari, Pachwai etc. 2. Denatured-spirit or Methylated-spirit. 3. Chlordiazepoxide, Diazepam, Oxazepam, Lorazepam, Flurazepam, Clorozepate, Nitrazepam, Triazolam, Temazepam etc. And etc.

Source: NCA 2018

The following section will describe how NCA 2018 pose challenges to the implementation of the harm reduction program.

2.3 Narcotics Control ACT 2018 and the harm reduction program

The NCA 2018 has many prohibitions on drug use and issues related to drug use that directly and indirectly impact the harm reduction program and PWID. Using, carrying, selling, distributing opioid drugs, including injecting, can be criminal offense according to the NCA 2018. The punishment can be diverse based on the degree of the offence. The most popular drug among of PWID are buprenorphine (or other injecting opioid drugs), cannabis, and benzodiazepine type depressants. First two drugs are class A ("ka") (most severe), cannabis is categorized as class B ("kha") and benzodiazepine type depressant is categorized as class C ("ga").

Table 4: possession of drugs and possible penalty in NCA 2018

Name of drugs	**Penalty**
Heroin, buprenorphine and similar type (class A, sub class 4)	a. Using is punishable offence and the punishment can be ranged from 3 months to 2 years of imprisonment with fine. b. Possessing less than 5 mg or 5 ml may cause 1 year to 5 years of imprisonment with fine. c. Possessing more than 5 mg or 5 ml to 25 mg or 25 ml may cause 5 years to 10 years of imprisonment and fine. d. Possessing more than 25 mg or 25 ml may cause life time imprisonment with fine to death penalty.
Methamphetamine and similar type (class A, sub class 5)	a. Using is punishable offence and the punishment can be ranged from 3 months to 2 years of imprisonment with fine. b. Possessing less than 200 mg or 200 ml may cause the 1 year to 5 years of imprisonment with fine. c. Possessing more than 200 mg or 200 ml to 400 mg or 400 ml may cause 5 years to 10 years of imprisonment and fine. d. Possessing more than 400 mg or 400 ml, the punishment can be life time imprisonment with fine to death penalty.
Cannabis and similar type (class B, sub class1)	a. Using cannabis is punishable offence and the punishment can be ranged from 3 months to 2 years of imprisonment with fine. b. Possessing less than 5 kg of cannabis may cause imprisonment of 6 months to 5 years with fine. c. Possessing more than 5 kg but less than 15 kg may cause 5 to 7 years of imprisonment with fine. d. Possessing more than 15 kg may cause 7 to 10 years of imprisonment with fine.
Benzodiazepine type depressant	a. No punishment was mentioned about using this drugs. b. Possessing less than 1 kg or 1 litter may cause 1 to 3 years of imprisonments with fine.

	c. Possessing between 1 to 5 kg or litter may cause 3 to 5 years of imprisonment with fine. d. Possessing more than 5 kg may cause 5 to 7 years with fine.

Source: Based on chapter five and section 9 of NCA 2018

Using any drug under the category of class A ("ka") is punishable offence and the punishment can be ranged from 3 months to 2 years of imprisonment with fine (chapter 5, section 36, serial no 16). At the same time, if anyone is identified with possessing less than 5 mg or 5 ml of buprenorphine or heroin (class A subcategory 4), the punishment can be ranged from 1 year to 5 years of imprisonment with fine. If the quantity is more than 5 mg or 5 ml to 25 mg or 25 ml, the punishment can be 5 years to 10 years of imprisonment and fine. If the quantity is more than 25 mg or 25 ml, the punishment can be life time imprisonment with fine to death penalty (chapter 5, section 36, serial no 8).

Yaba is under subcategory 5 of class A ("ka") and if anyone is possessing less than 200 mg or 200 ml, the punishment can be ranged from 1 year to 5 years of imprisonment with fine. If the quantity is more than 200 mg or 200 ml to 400 mg or 400 ml, the punishment can be 5 years to 10 years of imprisonment and fine. If the quantity is more than 400 mg or 400 ml, the punishment can be life time imprisonment with fine to death penalty (chapter 5, section 36, serial no 10).

Using cannabis which under the category of Class B ("kha") and subcategory 1, is punishable offence and the punishment can be ranged from 3 months to 2 years of imprisonment with fine (chapter 5, section 36, serial no 21). In addition to that, according to the chapter 5, section 36 and serial no 19, if anyone is found to be possessed less than 5 kg of cannabis, he can be imprisoned from 6 months to 5 years with fine. If the quantity is more than 5 kg but less than 15 kg, the punishment can be 5 to 7 years of imprisonment with fine. If the quantity exceeds 15 kg, the punishment can be 7 to 10 years of imprisonment with fine.

Other popular drugs such as benzodiazepine type depressants are categorized as class C ("ga") (sub category 3). No punishment was mentioned about using this drugs but possessing a certain amount of these drugs is punishable. If the quantity is less than 1 kg or 1 littre, the punishment can be 1 to 3 years with fine. If the quantity is between 1 to 5 kg or littre, the punishment can be 3-5 years of imprisonment with fine and if the quantity if more than 5 kg, the punishment can be ranging from 5 to 7 years with fine (chapter 5, section 36, serial no 33)

Among the components of the harm reduction program, OST program and needle and syringe program are conflicting with the NCA 2018. Other services such as abscess management, condom distribution, treatment of HIV/AIDS, STD, hepatitis and other diseases, and HIV testing services (HTS), or any service or therapy outside a drug addiction treatment program may not be considered as under control of Narcotics Control Act, 2018.

Table 5: sections of Narcotic control act 2018 are in conflict with HR

Acts that constitute offence	Sections of Narcotics Control Act, 2018	Impact on Harm Reduction (HR) interventions
Use of any scheduled Class Narcotics	9 &36(for Punishment)	Penalizes Users (other than medical ground with permission from controlling authority)
Possessions of any scheduled Class Narcotics	9 & 36 (for Punishment)	Penalizes 1.users 2.Service provider of OST
Supply of any scheduled Class Narcotics	9 & 36 (for Punishment)	Penalizes 1. Service provider of OST
Allowing premises or equipment to used for commission of offence	38	Penalizes 1.Owner/occupiers of premises of HR programs
Instigating, aiding Conspiring to commit offence	38,40,41	Penalizes: 1.Provision of the knowledge on safe injection behavior and paraphernalia 2.Provision for OST 3.Peer educators/outreach workers who communicate such information to the drug users 4. NSP outreach program
Person likely to commit drug offence in a public place can be arrested	21, 23, 26	Outreach workers and PWID with injection equipment under constant threat of arrest.

Source: based on NCA 2018

The use, administration, application, supply, offer, entertain, or provide with any drug (such as methadone) to a drug dependent person is under the control of Narcotics Control Act, 2018 (section 9). Help, assist, advise or collaborate with a drug dependent person in using, administering or applying any drug under the control of Narcotics Control Act, 2018. As a result, OST program is subject to be under the control of Narcotics Control Act, 2018 (Section 9 of Narcotics Control Act, 2018). Sub sections 1 and 2 of section 9 can hinder the operation of OST in Bangladesh since it prohibits any drug use, buying, selling, import, export, distribution and etc.

However, the Sub-section (3) of Section 9 of this law provides the provisions that all prohibitions on any drug under this law is exempted in case of manufacturing medicines, medical treatment, industrial use, scientific research or any other legitimate activity approved by the Director General (DG) of the DNC under a license, permit or permission issued under this

law. With this provision, currently the OST programs are operating in Bangladesh. Even upon taking permit, according to the same sub-section, OST clients can take and even carry OST from the DIC.

The operation of needle and syringe program is, to some extent, at odds with the NCA 2018. There are some sections and sub-sections in the act that directly and indirectly are in conflict with the program. Since this program provides needle and syringe to PWID, though with an intention to curb HIV among them, in one perspective it can be seen as patronizing/helping/persuading drug use. Section 40 criminalizes any patronage of drug use, section 41 criminalizes any assistance/help and persuasion of drug use. In that perspective, carrying out needle and syringe distribution at the outreach spots can be offence against the NCA 2018. Though import, purchase, possession, carry, transport, supply, offer, exchange, storage, use, administer, apply or supply of any paraphernalia or equipment such as needle syringe in general is not an offence under the Narcotics Control Act, 2018, it becomes offence in case of any activity related to drug abuse (Sections 38, 40, 41, of Narcotics Control Act, 2018).

At the same time, the organizations that have been running DIC and the owner of the DIC premise can be under the control NCA 2018 since the section 38 indicates that if any person or organization allows any drug offence to be happened in their property, it will be considered as offense. Since CDIC operates OST program and DIC keeps needle and syringes for distribution for drug use in their property it can be considered as offense according to the NCA 2018.

In addition to that NCA 2018 can highly impact the outreach activity by allowing law enforcement agencies raid, search and arrest PWID from their spots or any other places. Section 21, 23, 26 authorize the law enforcement agencies to search, confiscate needle and syringe and arrest PWID if they believed to be injecting or have injected or will inject drugs. Section 21 and 23 authorizes that if any members of the law enforcement agency suspect proof of drug possession or use in an individual, they reserve the right to search, arrest and accost the individual who may seem like he or she has taken, or intends to take drugs. Moreover, section 26 mandates that law enforcing agencies are entitled to confiscating any proofs of drug use, such as drug-injecting equipment.

2.4 Other laws and policies in conflict with Harm reduction program in Bangladesh

Section 54 of the Code of Criminal Procedure, 1898 allows a police to arrest any person without a warrant. At the same time section 75, 80 and 86 of DMP Ordinance 1976 provides the right a police to arrest someone without a proof of any criminal activity. These sections allow a police to search and arrest PWID even if there is no proof of drug use or possession.

Section 268 and 292 of the penal code 1860 and section 4 and 8 of pornography control act 2012 might consider the BBC materials of outreach service, especially the demonstration of safe sex and etc. as conflicting.

2.5 Drug Policy Reform Initiatives in Bangladesh

On 18 and 19 May 2013, The National AIDS/STD Program (NASP) of the Government of Bangladesh along with UNAIDS Bangladesh and the UNDP Asia-Pacific Regional Centre, organized a two day "National Legal Consultation on Punitive Laws That Hinder AIDS Response in Bangladesh" in Dhaka, Bangladesh (NASP, UNDP Asia Pacific Regional Centre, UNAIDS Bangladesh, 2013). A total of 82 participants attended the event including representatives from different national and international NGOs, government bodies, civil society, activists group, experts in law, public health and HIV, media and etc. The workshop premised on the following objectives:

- To identify laws prevailing that are hindering the AIDS response in Bangladesh,
- To build consensus on reforms needed to create an enabling legal environment for access to HIV services and
- To develop a time-bound action plan of identified priorities to address the punitive and discriminatory legal environment that is impeding the AIDS response in Bangladesh.

Key action points generated from this workshop were:

Sections 19, 21 & 25 of the Narcotics Control Act, 1990 were identified as being detrimental to the harm reduction program and specific recommendation were made during the workshops. They are;

1. Legal reform should use, carrying, transport and storage of specific drugs under the supervision and approval of the Department of Narcotics Control and the relevant ministry, UN agency and Government authorized relevant agency.
2. Strict supply and monitoring system of drugs should be ensured.
3. Guidelines could be sought from the administrative authorities or the courts to determine the scope of application of these provisions to prevent their arbitrary or discriminatory use.
4. Policy changes with regard to methadone should be made by the drug control authority in collaboration with the Ministry of Home Affairs.

This workshop also identified that there is lack of a specific policy on people who inject drugs deprives several vulnerable groups within the population of people who injects drugs of access to HIV prevention, treatment care and support. And for that they made specific recommendations.

1. Children who are drug users should be included in the harm reduction program
2. 60% of female drug users who are sex workers should receive special support
3. Interventions are needed to support people who inject drugs who are in prison.
4. Recovering people who injects drugs should be included within the national safety net policy, and able to access employment opportunities

In addition to that, in order to ensure the basic medico legal facilities for persons who inject drugs in community and prison settings, it was recommended to take action plan for 1. Recognition and endorsement for 'harm reduction program' by all relevant government agencies and other stakeholders, 2. Scaling up Methadone maintenance treatment (MMT) program and 3. Introducing harm reduction program Harm in prisons.

To achieve 1, it was decided to establish a Steering Committee with a defined TOR and time line, to Carryout sensitization/ advocacy programs of relevant ministries, agencies and media, to review and update 'Harm Reduction Strategy and obtain endorsement from MOHFW, Ministry of Law, to carryout sensitization programs for law enforcement agencies and other institutions to gather support for Harm Reduction Operation, to strengthen inter-country Police Advisory Committee

To achieve 2, it was decided to review and update formation of National Steering Committee for MMT with a defined TOR, to carryout sensitization programs for National Narcotic Board and other relevant Departments, to ensure supportive procedures for MMT Clinic Operation (Methadone procurement, store, transport, carry, storage and use etc.), to establish five more MMT clinics in needy areas, to carryout Fund Raising activities for operation and scaling up of MMT Clinics, to organize exposure visits for service providers.

To achieve 3, it was decided to establish a Steering Committee with a defined TOR, to identify the provisions of the Jail Code that currently obstruct introduction of Harm Reduction Program in Prison and take appropriate policy initiative to correct it, to introduce Harm Reduction Programs in Prisons – Needle/Syringe exchange, Condoms, STI , BCC , VCT, MMT etc. and to carryout Fund Raising activities.

A follow-up consultation workshop was held on 18 May 2017 (National Human Rights Commission, Ministry of Health & Family Welfare, , 2017). The objectives of this workshop were-

- To review progress in addressing laws and policies hindering the HIV response since 2013,
- To identify newly emerged issues, discuss the current Government led initiatives,
- To identify how other relevant stakeholders including civil society can strengthen the whole process, and
- To build consensus on the next course of actions.

The workshop engaged representatives and experts from national human rights commission, human rights activists, relevant ministries including Health, IMSC members, UN agencies, civil society members, self-help groups etc.

The following recommendations were made as prioritized activities in addressing punitive and discriminatory policy and legal environment:

- Select more priority laws and policies and work on the recommendations to curb misapplication in order to uphold rights of PLHIVs and KPs, and for smooth program delivery.
- Initiate targeted advocacy on public health and law enforcement working together with relevant Government authorities including Ministry of Law, Dhaka Metropolitan Police, District Police authority etc.
- Address HIV related issues in other multi-sectoral laws, policies, acts etc. for example, the Narcotics Control Act; and ensure effective coverage of HIV related marginalized populations in the protection mechanisms.

Consequentially, an inter-ministerial sub-committee was organized by Ministry of Health and family Welfare, which submitted a list of recommendations to address the legal barriers to HIV/AIDS program on April, 2018.

However, both of the initiatives were further moved to the next steps. Therefore, the committees become non-functional and inactive.

3. Discussion and Way Forward:

The challenge of drug policy reform is to achieve an optimally balanced system that conserves human wellbeing through regulation of harmful substances with adequate flexibility, while limiting suppression of health and human rights of the users. Policies need to be guided by policy evaluation, consideration of substances and patterns of use, harm reduction principal, socio-cultural flexibility, human rights, developmental initiatives and participation of users, as well as front line workers (Blickman & Jelsma, 2009).

According to a literature review on models, implementation and outcomes of drug decriminalization policy by Finnish Institute for Health and Welfare, drug use and personal possession has been decriminalized following two legal frameworks- *de facto* and *de jure*. In *de facto* decriminalization, although both drug use and personal possession remain criminal offenses, penalty is not enforced; instead, offenders are referred to treatment, social service or counselling facilities through sanction. In contrast, *de jure* decriminalization refers to formal removal of penalties for certain activities though legal reform (Unlu, Tammi, & Hakkarainen, 2020).

In Bangladesh, most components of the harm reduction program, except for OST and NSP, are not in conflict with NCA 2018 and there are no legal barriers to conduct them. However, OST program can be prohibited as it is against the sub sections 1 and 2 of the section 9 of NCA 2018. But, in the same section, sub section 3 provides the opportunity to operate OST program with a legal license from the DNC. Currently the OST program has been operating with this license issued by the DNC. However, NSP is still an unsolved issue since many sections and sub sections (such as section 21, 23, 26, 38 40, 41) can be barriers to the distribution and carrying of needle and syringes. Since the program is operating under ASP of ministry of health and in outreach modality, a consensus among two ministries (ministry of health and ministry home) is yet to be made and a proper discussion among them is yet to achieve in order resolve the legal barriers of the operating NSP. Respective stakeholders also may re-activate the inter-ministerial committee (formed with assistance from UNAIDS) like forum and continue the advocacy with respective ministries and departments in future as well until having a favorable situation for harm reduction program.

Table 6: Matrix for the Harm Reduction Components and Narcotic Control Acts 2018

Sl. No	Harm Reduction Components	Related Existing Laws from government/ policies/ Acts to the HR components	Supportive or creating hindrance to HR?
1	Needle and syringe programs (NSPs)	According to the NCA -2018, NSPs exchange program is only possible in the legal and Licensed Treatment and Rehabilitation Center.	21,23,26,38,40,41 section of the NCA 2018 problematize this program
2	Opioid substitution therapy (OST)	OST program is subject to be under the control of Narcotics Control Act, 2018 (Section 9(3) of Narcotics Control Act, 2018;	Allowed with permission from DNC (sub section 3 of section 9)
3	HIV testing services	HTS this is under the Ministry of Health Welfare and need permission. National AIDS Policy and the National HIV/AIDS Strategic Plan incorporated harm reduction services for IDUs in its strategic plan	No prohibition from the NCA 2018
4	Antiretroviral therapy	Government is committed to provide effective health care service as per the constitution (Drug Policy,2016)	No prohibition from the NCA 2018
5	Prevention and treatment of sexually transmitted infections	Necessary measures for treatment and rehabilitation of the drug addicts, generate public awareness campaign and educational measures on harmful effects of drugs services such as intervention, motivation, screening, diagnosis, counseling, abscess management in general are legal, but in case of an activity related to treatment of drug addiction these are illegal without license, permit or any legal authority from the DNC under sub-section (3) of Section 61 of Narcotics Control Act, 2018	No prohibition from the NCA 2018
6	Condom distribution programs for people who inject drugs and their sexual partners	Condom distribution outside a drug addiction treatment program may not be considered as under control of Narcotics Control Act, 2018; Stronger integration between Sexual and Reproductive Health (SRH) and HIV and AIDS interventions is prioritized by 4th National Strategic plan 2018-2020	No prohibition from the NCA 2018
7	Targeted information, education and communication for people who inject drugs and their sexual partner	Carrying information and educational material for HIV prevention may also be considered a punishable act under the current laws. These laws hinder effective HIV responses and impede FSW access to justice, especially when they experience violence (NASP, 2016). Outreach Program requires a license or permit or permission from the DNC under Section 9(3) & 13 of the Narcotics Control Act, 2018. Clause (Cha) of the Section 6 states that the DNC should communicate with all ministries and organizations and coordinate all of their drug related activities	No prohibition from the NCA 2018
8	Vaccination, diagnosis and treatment of viral hepatitis	Prevention and treatment of hepatitis and other diseases outside a drug addiction treatment program may not be considered as under control of Narcotics Control Act, 2018; Integration of referred services by NSP 4th 2018-2020	No prohibitions in the policy
9.	Prevention, diagnosis and treatment of tuberculosis	related points/ section : Integration of referred services by NSP 4th 2018-2020	Widely accepted program in Bangladesh

References

Ahmed, Ishtiaque and Mahmood, Hasan 'The Narcotics Control Act, 1990', New Warshi Book Corporation, 2nd print, 2007, Dhaka

Azim, T., Hussein, N., & Kelly, R. (2005). Effectiveness of harm reduction programs for injecting drug users in Dhaka city. *Harm reduction journal, 2*, 22-22. doi: 10.1186/1477-7517-2-22

Blickman, T., & Jelsma, M. (2009). *Drug policy reform in practice.* Transnational institute.

DNC. (2018). Annual Drug Report Bangladesh- 2018. Dhaka.

DNC. (2020). *Bulletin of the Department of Narcotics, January 2020*. Dhaka: Department of Narcotics. Ministry of Home Affairs. Government of the People's Republic of Bangladesh.

Global Commission on HIV and the Law. (2012). Risks, Rights & Health. New York: UNDP, HIV/AIDS Group, Bureau for Development Policy .

Global Commission on HIV and the Law. (2018). Risks, Rights & Health- Supplement. New York: UNDP, HIV and Health Group, Bureau for Policy and Programme Support.

Hasan Kazi Mahboob, Current trends of illicit drug use and the country response in Bangladesh, MPH thesis, University of Melbourne, 14 November, 2005

HRI. (2009). What is harm reduction? Retrieved 28 January, 2019, from https://www.hri.global/what-is-harm-reduction.

HRI. (2019). The Global State of Harm Reduction: 2019 Updates Harm Reduction International.

Harm Reduction International. (2020). *What is Harm Reduction?* (Harm Reduction International) Retrieved May 16, 2020, from Harm Reduction International Website: https://www.hri.global/what-is-harm-reduction.

Larney, S., Peacock, A., Leung, J., Colledge, S., Hickman, M., Vickerman, P., . . . Hines, L. (2017). Global, regional, and country-level coverage of interventions to prevent and manage HIV and hepatitis C among people who inject drugs: a systematic review. *The Lancet Global Health, 5*(12), e1208-e1220.

NASP. (2014). *Revised 3rd National Strategic Plan for HIV and AIDS Response 2011-2017*. Dhaka, Bangladesh.

NASP, UNDP Asia Pacific Regional Centre, UNAIDS Bangladesh. (2013). National Consultation on Punitive Laws Hindering the AIDS Response in Bangladesh. Dhaka.

National AIDS/STD Control Programme, Directorate General of Health Services, Ministry of Health and Family Welfare. (2016). *Mapping Study and Size Estimation of Key Populations in Bangladesh for HIV Programs 2015-2016.* Dhaka: National AIDS/STD Control Programme.

National AIDS/STD Programme (NASP), Directorate General of Health Services, Ministry of Health and Family Welfare. (2016). *4th National Strategic Plan for HIV and AIDS Response 2018-2022.* Dhaka.

National Human Rights Commission, Ministry of Health & Family Welfare, . (2017). Follow-up National Consultation on Policy and Legal Barriers Hindering the AIDS Response in Bangladesh, National AIDS/STD Control Programme, UNAIDS Bangladesh. Dhaka.

Save the Children in Bangladesh. (2020). Program Brief- Priortized HIV prevention services for key popuations in Bangladesh. Bangladesh.

The Global Fund. (2017). Draft funding request/concept note for HIV (2017-2019) to The global fund.

The Narcotics Control Act, 2018. (2018).

Thomas, G. (2005). Harm reduction for special populations: Harm reduction policies and programs for persons involved in the criminal justice system. Ottawa, ON, CA: Canadian Centre on Substance Use.

Unlu, A., Tammi, T., & Hakkarainen, P. (2020). *Drug Decriminalization Policy: Literature Review: Models, Implementation and Outcomes.* Helsinki: Finnish institute for health and welfare.

UNAIDS. (2019). *Health, Rights and Drugs: Harm Reduction, Decriminalization and Zero Discrimination for People Who Use Drugs.* Geneva: UNAIDS.

UNAIDS (2019) UNAIDS Data 2019

UNODC. (2017). World Drug Report 2017: Global Overview of Drug Demand & Supply. Vienna: UNODC.

WHO. (2016). *Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations.* France : World Health Organization.

WHO. (2020). Harm Reduction. from World Health Organization. http://www.euro.who.int/en/health-topics/communicable-diseases/hivaids/policy/policy-guidance-for-areas-of-intervention/harm-reduction.

WHO, UNODC, & UNAIDS. (2012). WHO, UNODC, UNAIDS technical guide for countries to set targets for universal access to HIV prevention, treatment and care for injecting drug users. Geneva, Switzerland.

World Health Organization . (n.d.). *Harm Reduction*. Retrieved from WHO Website: http://www.euro.who.int/en/health-topics/communicable-diseases/hivaids/policy/policy-guidance-for-areas-of-intervention/harm-reduction.

World Health Organization, Regional Office for South-East Asia (2010) *Report on people who inject drugs in the South-East Asia Region,* Retrieved from WHO Website: https://www.who.int/hiv/pub/idu/people_who_inject_drugs_searo_010.pdf

Annex

Narcotic control act 2018 (http://bdlaws.minlaw.gov.bd/act-details-1276.html)