SHOULD SUBSTANCE USE AND POSSESSION BE DECRIMINALIZED IN GHANA?
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The public harm principle gives good reason to drug criminalization, according to which the state is justified in limiting the rights of individuals on the grounds that their actions will undermine institutional practices and regulatory systems (Fellingham et al., 2012). Drug addiction can threaten civic safety given that people under the influence of drugs may have a garbled view of the world or society they live in making them vulnerable to participation in activities that threatens the safety of themselves and those around them such as armed robbery, traffic violations, domestic violence and others. Aside from criminal offenses the risk of spreading infectious diseases such as HIV/AIDS, hepatitis B and C and tuberculosis are prevalent due to factors such as unprotected sex and sharing of infected needles arising from being unable to make appropriate decisions while under the influence of drugs (Kabore et al., 2019). Ghana is a developing country; drug abuse leads to enormous loss of life and its reverberations spill into the general society which hinders effective functionality and growth of population according to Kabore, 2019. Public harm is further magnified in developing countries by the poor economic and living condition with spending by the Government on substance abuse treatment classified as an extra financial burden on already strained budgets (Kabore et al., 2019).

Decriminalization of substance use and possession in Ghana is the first step towards a progressive public health action for the Ghanaian society.

Criminalization based on public harm is a highly debatable issue, first we must ascertain who is the public being protected from harm in this case. Are we referring to Ghanaian citizens living under Ghana’s jurisdiction, or does it cover non-Ghanaian citizens living under Ghana’s jurisdiction or Ghanaian citizens living abroad? In a society where personal usage is not considered public harm, criminalizing usage of drugs by a Ghanaian citizen when the ones being protected “the public” are members of a society where the laws do not consider being exposed to a consumer of such drugs would fall under a vague cause for criminalization because a part of the principle of public harm is not manifested at any time, however the argument for decriminalization on the basis that drug usage does not satisfy the criteria for public harm or the public harm principle does not focus on the classification of citizenship or non-citizen, jurisdiction or otherwise but rather that the public harm principle or harm principle which was formulated by John Stuart Mill in his work On Liberty, described by Mill as “the nature and limits of the power which can be legitimately exercised by society over the individual.” is faced with difficult with a notable difficulty being able to discern if the action affects only the actor or individual doing the action or if it affects society and others. Another difficulty is determining how much harm or risk of harm can be considered sufficient to justify criminalizing an action, in this case criminalizing drug usage. As Joel Feinberg noted two important factors involved in assessing when this is the case: the magnitude of harm and the likelihood that the action will result in harm. Feinberg touches the relationship between magnitude and likelihood of harm and the justification of criminalizing a conduct with the statement “the greater the probability of harm, the less grave the harm need be to justify coercion; the greater the gravity of the envisioned harm, the less probable it need be.”(Lucas, 2014). Evaluating the harm principle to see if drug use constitutes enough harm to justify being criminalized shows in most cases that there is no direct harm to other from drug usage. For instance, there are very few instances when a heroin user by consuming or injecting heroin would cause or be causing direct harm to another person. Hussak explains that “One possible way to describe this distinction is to say that drug use is indirectly harmful to others, whereas these other crimes are directly harmful to others (Lucas, 2014). These arguments and facts show that drug usage in itself is not harmful to others or constituting public harm in some aspects of the broad definition of public harm and not warranting criminalization of the drug usage.

Criminalization of substance possession and usage in Ghana coupled with a police service that is well trained, with its curriculum categorized under Police Science, Legal Studies, Social Science, Communication Skills and Information Technology and Basic Officer Skills and with research showing that the police apply their training to police work professionally by being proactive in fighting crime (Mensah, 2018), a functional enforcement of the associated policies has seen low mortality rates in the country, since Ghana has recorded moderate mortality rates from overdose or a reduced rate of infectious diseases from causes associated with substance usage compared to other countries with 562 deaths recorded in Ghana and 67,629 in the United States in 2017 (Global Change Data Lab, 2019). An argument may be that enforcement of the policy and awareness campaigns on the dangers of substance use and possession has been successful in creating a better society with criminalization and the associated penalties serving as a deterrent to both current and prospective users. Ghana has seen cases of individuals being arrested for substance possession or usage, a case reported by Ghanaian media myjoyonline.com states that the Founder and Leader of Anointed Chapel International, Francis Antwi, popularly known as Reverend Obofour was arrested by the Accra Regional Police Command upon directives by then Inspector-General of Police, James Oppong-Boanug for asking one of his congregants to smoke a banned substance (suspected to be Indian hemp or wee in a video that went viral) in church (myjoyonline.com, 2019). The basis for this action is based primarily on the Narcotic Drugs (Control, Enforcement and Sanction) Act, 1990 (PNDCL 236) which criminalizes the action with the specific act stating that “(1) A person who, without lawful authority, the proof of which lies on that person, has possession or control of a narcotic drug commits an offence.” and carrying a penalty upon conviction as stated “(2) A person found guilty of an offence under subsection (1) is liable on conviction to a term of imprisonment of not less than ten years.” which can be considered a strong deterrent to possession or usage of such substances. The action taken by the Accra Regional Police Command shows that the Ghanaian law as at the time of the event strongly considers usage of such drugs a criminal offense with articles to discourage use and possession, the influence of such cases both past and as at the time of the event must have been paramount in reduction of substance abuse and reasonably possession and as a result reduced usage and low rates of overdose relatively as shown in comparison of mortality rates from drug overdose between Ghana and the United States with population differences accounted, criminalization must have influenced a reduction in criminal offenses (Dziwornu, 2021) obliquely due to the constantly renewed awareness of a legal system that criminalizes possession and intake of certain substances which would have a cause-and-effect on both prospective and current users. If we work with a model that proves usage of drugs is strong tied to criminal activities(French et al., 2000), criminalization of the possession of drugs and intake with strong penalties as defined in the Ghanaian Acts of Parliament would be directly responsible for a reduction in criminal activities with the caveat being the ability of the Ghanaian drugs regulatory authorities, the prosecuting authorities and the policing agencies abilities to effectively implement the statues of the law criminalizing substance use and possession. Developing nations are faced with problems such as corruption (Addo, 2021). Bribery and negligence by appointed officials in most arms of Government and its agencies are also prevalent (Agyena, 2020). Having an act of parliament that criminalizes usage and possession of certain substances would reasonable have aided in defining a methodology for tackling crime compared to a system that does not have such statues in place.

However, criminalization may not be the main factor in the reduced mortality rate but the effective system of the Ghanaian society, a functional health care system, being a democratic society and a having functional media that successful promotes both state and a safe society agenda. While criminalization may be seen as the main deterrent, decriminalization is being adopted as a global standard with studies, research and results from current models showing great success in societies that do not criminalize drug usage, Ghana can learn from Portugal which is a base model when referring to nations that have taken the lead in classifying possession and usage as a health concern where the user is a victim in cases of abuse rather than a criminal or threat to public safety with violations being handled by an administrative panel which makes recommendations for treatment (Office of National Drug Control Policy AddressOld Executive Office Building, Washington, DC 20500, United States, 2010). Addiction is considered a health concern with the United Nations General Assembly Special Session on drugs (UNGASS 2016) recognizing “drug addiction as a complex multifactorial health disorder characterized by chronic and relapsing nature” that is preventable and treatable and not the result of moral failure or a criminal behavior (Fusar-Poli, 2017).

The argument against the Public harm principle proves that at any point in time a drug user is not directly affecting the society through usage in itself, while this argument does not touch the follow up effect or consequences, it can be assumed that any activity when criminalized would have possible actor shaming when the actor is considered a criminal both by state and society, in the case of substance usage, the actor happens to be the victim in individual drug use. Ghana as a state like any other state has the welfare of its citizens enshrined in its constitution. Criminalizing an action carried out by a vulnerable person who should rather be supported through programs targeted at recovery of the individual is contrary to what a society’s goal for development upholds. The associated fear of victim shaming coupled with penalties such as fines or imprisonment would prevent a victim from seeking help with restorative justice (Yunusa et al., 2017) as an option recommended for some states. Avenues helping substance users or abusers may have a strong patient confidentiality but lack of trust arising from fear of being prosecuted may deter persons from seeking assistance for addiction. Ghana has come a long way in being the poster state for stable democracy, human rights and more recently taking a strong step towards decriminalization with The Narcotics Control Commission Bill 2019 (Global Initiative, 2017) which recognizes the Public Health approach and ensures that problematic substance use (substance addiction) is treated not as a public security and safety issue, but a public health issue (Paulo, 2019). Given that Ghana acknowledges the World Drug Problem with all its attendant menace to governance, socio-economic development, democracy, human rights, Public health as well as safety and public security at the global, continental, sub regional and country-level (Paulo, 2019).

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