

---

# THE STRUCTURAL ARCHITECTURE OF BAIL DENIAL IN INDIA AND HOW THEY ARE MISUSING THE NDPS ACT

---

Yash Raj Sharma, BBA LLB (Hons), Bennett University | The Times Group

Prajwal Tapase, Bennett University | The Times Group

## ABSTRACT

The Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), enacted in the heat of epithets of the global intensification of punitive drug controls policies, has developed into one of the most severe criminal laws in India. Characterised by the reversal of the burden of proof, extraordinary bail restrictions and wide police discretion, the Act has created a culture of abuse and a permanent bail crisis. Section 37's imposing conditions in the form of requiring courts to form an opinion as to the innocence of the accused at the pre-trial stage are equivalent to turning bail hearings into premeditated (ahead of time) determinations of guilt by the jury or judge, thus working against the presumption of innocence.<sup>1</sup> Combined with the reverse burden under Sections 35 and 54<sup>2</sup> and wide procedural lapses in the field of search and seizure, the statute structurally disadvantages accused persons, and results in lengthy periods of incarceration pending trial. Sociological patterns thus show that NDPS enforcement disproportionately targets economically vulnerable populations and functions as a way of social control that are determined by bureaucratic incentives and moralistic public attitude. Comparative analysis, that world over, demonstrates the failure of punitive criminalisation, while public health-oriented models such as that pursued in Portugal's case with the decriminalisation scheme and Canada with the regulated cannabis system<sup>3</sup> work in ways that are significantly enhanced. This article contends that NDPS Act reinforces punitive ideology incompatible with the constitutional values such as fairness, proportionality and liberty and has an eventual failure to control drug dependency and drug trafficking. It advocates a re-calibration of standards on bail, a limitation on reverse burden clauses, a strengthening of the procedure and re-orientation of India's drug policy towards harm reduction. The study concludes that without substantive reform, the NDPS Act will never be structurally safe from misuse and instead will perpetrate injustice, rather than attain its avowed goals.

---

<sup>1</sup> Kali Ram v State of Himachal Pradesh (1973) 2 SCC 808.

<sup>2</sup> Noor Aga v State of Punjab (2008) 16 SCC 417.

<sup>3</sup> Glenn Greenwald, Drug Decriminalization in Portugal: Lessons for Creating Fair and Successful Drug Policies (Cato Institute 2009).

Cannabis Act 2018 (Canada).

**Keywords:** NDPS Act, Bail Denial, Reverse Burden - Criminal Justice, Procedural Safeguards

## INTRODUCTION

The Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) holds a special place in the Indian statutory law, as the country's strong commitment to the "War on Drugs" that was sweeping the world in the latter part of the twentieth century. The Act's key assumption is founded in deterrence through severe punishment, and dates back to a period when narcotics were thought of, not as a public health issue, but as a threat to be met with aggressive measures under criminal law. Almost 40 years later, the NDPS Act has fostered an enforcement paradigm characterised by overcriminalisation, lengthy incarceration and lack of procedural integrity. While it was intended that the legislation would address organised trafficking, empirical data shows that enforcement is focused on low-level users rather than high profile traffickers, thus defeating the purpose of the legislation.

Section 37<sup>4</sup> (the bail provision in the statute) is at the centre of the NDPS crisis. Seen from the twin requirements of its application, that sought by the court are the creation of a "reasonable belief" that the accused is not guilty and will not reoffend, the fundamental issues of the test of evidence that are incompatible with the object of bail and presumption of innocence set out in *Kali Ram v State of Himachal Pradesh* (1973) 2 SCC 808.<sup>5</sup> This form of statutory inversion turns bail hearings into hazardous paging of the evidence in advance, which burdened courthouses and structurally disadvantaged accused persons. The result can be seen in the overpopulation of NDPS undertrials in Indian prisons<sup>6</sup>, and many of them go to prison for years awaiting trial.

Further, NDPS investigations are plagued by procedural irregularities, especially in relation to sections 42 and 50 of the NDPS, which require information recording in writing and notification to the accused of the right of search before a Gazetted Officer or Magistrate<sup>7</sup>. The Supreme Court in the case of *State of Punjab vs Baldev Singh* (1999) 6 SCC 172 emphasised on the necessity of these cheques, but there is rampant non-compliance and the problem is

---

<sup>4</sup> *State of Kerala v Rajesh* (2020) 12 SCC 122.

<sup>5</sup> *Kali Ram v State of Himachal Pradesh* (1973) 2 SCC 808.

<sup>6</sup> National Crime Records Bureau, Prison Statistics India

<sup>7</sup> *State of Punjab v Baldev Singh* (1999) 6 SCC 172.

entrenched. Such violations not only defeat the fairness of prosecution but also speak of structural flaws in training, oversight and incentive structure in enforcement agencies.

From a sociological perspective, it is clear that the enforcement of the NDPS affects socio-economically disadvantaged groups disproportionately, such as daily wage earners, migrants, homeless persons, street-based drugs users, as an example of the Act functioning as much as an instrument of social control as a narcotics regulation. Media sensationalism, especially in high-profile cases, also corrupts enforcement priorities as it encourages investigative agencies to become more focused on symbolic performance than on substantive disruption of drugs trafficking.

Globally, punitive drug laws have come under widespread criticism for their failure to reduce drug dependency and/or trafficking. Portugal's model of decriminalisation and Canada's regulated cannabis market prove that harm reduction and public-health-based models are much more effective than criminalisation. India's following of punitive orthodoxy therefore appears more and more outdated.

This manuscript is an argument which synthesises doctrinal, sociological and comparative analyses to prove misuse of NDPS Act is not incidental but structurally embedded. The combination of the Act's punitive architecture and procedural irregularities and socio-economic vulnerabilities with profound consequences of structural injustice, calls for an urgent need for its reform.

## RESEARCH COMPILATION

Academic writing about narcotics law is repeatedly concerned with the Narcotics law (NDPS) Act for entrenching special penal procedures into the context of an ordinary criminal system. Scholars emphasise that the legislative journey of the Act - from the 1989 amendment that brought in harsher minimum sentences, to the 2001 amendment that brought in a quantity-based framework - has not been effective in distinguishing between dependent users and traffickers<sup>8</sup>. Exemplification/Explanation: criminological literature describes Act as an instrument of moral government and puts the focus on enforcing social norms instead of tackling structural cause of drug get-hook.

---

<sup>8</sup> Narcotic Drugs and Psychotropic Substances Act 1985.

Doctrinal scholarly standpoint focuses on the incompatibility of reverse burden clauses with the Indian constitutional set up, especially Article 21 which provides for the principle of fairness and reasonableness<sup>9</sup>. Studies show that trial courts often accept recovery evidence without sufficient review as to whether or not compliance with procedure is made; and that as a result, defendants are convicted of crimes and later acquitted by higher courts, which have not made such sacrifices. However, there are frequent acquittals after years of pre-trial detention, pointing to the inadequacy of judicial remedies to deal with the structural misuse.

Empirical research brings in the spotlight Section 37 as the driving factor behind the NDPS undertrial crisis. Data shows that NDPS undertrials spend much longer in gaol as compared to NDPS undertrials charged under IPC or CrPC, regardless of the gravity of the offence<sup>10</sup>. Sociological studies disclose disproportionate targeting of marginalised populations and comparative literature draws attention to the movement throughout the world towards decriminalisation and/or harm reduction. Collectively, out of the literature, we can see that the misuse of the NDPS Act is neither an aberration nor an issue of isolated misconduct, but rather it's embedded in the structural design of the Act itself<sup>11</sup>.

## DOCTRINAL ANALYSIS

The NDPS Act is doctrinal anomaly in the criminal law of India chiefly because of the presumptions of evidence that overturn the burden of proof on the prosecution. Section 35 assumes the culpable mental state whereas section 54 assumes possession from mere physical custody thus decreasing prosecution obligation to prove essential elements of the offence. This presumption centric architecture radically departs from the settled principle in the case of *Woolmington v DPP* [1935] AC 462, accepted and reiterated in Indian jurisprudence, in which the prosecution to prove guilt beyond reasonable doubt<sup>12</sup>. Although the Supreme Court in *Noor Aga v State of Punjab* (2008) 16 SCC 417 cautioned against the mechanical application of these presumptions, the lower courts regularly give conclusive importance to recovery thereby undercutting the real judicial scrutiny<sup>13</sup>.

---

<sup>9</sup> *Union of India v Sanjeev V Deshpande* (2014) 13 SCC 1.

<sup>10</sup> National Crime Records Bureau, Prison Statistics India

<sup>11</sup> Amrita Basu, 'Drug Policing and Marginalisation in India' (2019) Economic & Political Weekly 22. (and) United Nations Office on Drugs and Crime, World Drug Report (2023).

<sup>12</sup> *Woolmington v DPP* [1935] AC 462.

<sup>13</sup> *Noor Aga v State of Punjab* (2008) 16 SCC 417.

Sections 41 to 43 where it gives extensive powers to conduct warrantless searches provide fertile ground for procedural hypertrophy. Violations of the requirements in Section 42 for written information and in Section 50 for informing the accused of their rights are widespread<sup>14</sup>. In spite of judicial insistence on strict compliance (Baldev Singh) the enforcement practises remain largely unchanged due to a lack of training, poor supervision and incentives for performance related to number of arrests rather than accuracy of investigation. These doctrinal deviations open up systemic vulnerabilities at the university level where people who are innocent are going under the presumption of guilt and the prosecution gets less work. The doctrinal frame thus incentivises noxious superficial investigations, and it provides constitutional protections, as well as encouraging the systemic misuse.

## SOCIOLOGICAL ANALYSIS

Sociologically, aided enforcement into NDPS is rooted in deeply rooted inequalities of structural power. Individuals arrested under the Act are from primarily marginalised socio-economic classes such as daily wage labourers, migrants and the urban poor. Their visibility in public spaces, legal illiteracy, and lack of social capital makes them low hanging fruit for enforcement strategies focusing on high arrest stats rather than good disruptive management of trafficking. These patterns show evidence of an enforcement culture contoured by institutional incentives: officers are being incentivized for seizures and arrests, and not for dismantling networking operations as complex as the ones involved in trafficking.

Longitudinal studies indicate that numerous arrests by NDPs tend to lead to lasting social stigma, familial relationship interruptions, employment opportunities, and community integration long after one has been acquitted<sup>15</sup>. Drug dependence among marginalised populations is usually associated with structural vulnerabilities such as poverty, trauma and a lack of access to healthcare<sup>16</sup>. Yet drug use is framed within the Act as something that should be a moral failure, which needs to be punished, rather than something that should be a socio-medical issue that needs to be changed. Media sensationalism, especially in the case of celebrities, heightens the moral panic, however, and skews priorities in enforcement through incentives to make symbolic arrests. In the context presented, NDPS enforcement works not

---

<sup>14</sup> State of Punjab v Baldev Singh (1999) 6 SCC 172; State of Rajasthan v Parmanand (2014) 5 SCC 345.

<sup>15</sup> National Crime Records Bureau, Prison Statistics India (latest year) or cite a sociological study if you have one.

<sup>16</sup> World Health Organization, World Health Report on Substance Use and Treatment.

so much as a rational crime-control mechanism, but rather as a socio-political tool for the reinforcement of structural inequalities.

## COMPARATIVE ANALYSIS

Comparative analysis is used to point out the worldwide disconnection between punitive drug policies and evidence-based harm reduction policies. The model of Portugal's 2001 reform, in which possession of all types of narcotics was decriminalized for personal use, is the most influential model of reform<sup>17</sup>. Instead of criminal prosecution, people are directed to "dissuasion commissions" that consist of medical and social professionals who assess needs for treatment. Empirical evaluations have shown substantial reductions in overdose deaths/high transmission rates, undesirable drug dependency, and Criminal Justice burdens. This model confirms the hypothesis that drug dependence should be treated as a public health problem with better results than punishing the offence through the criminalisation of it.

Under Canada's Cannabis Act 2018, a regulated market for recreational cannabis was created which emphasises age restriction, quality control of products, and taxation<sup>18</sup>. Research shows that legalisation helped reduce activity in the black market, ensured a safer consumption and raised revenue for public welfare programs. A number of states in the U.S. have made a push for harm reduction practises, such as safe injection sites and decriminalisation of minor possession<sup>19</sup>. These types of approaches recognise the failures of punitive approaches and are based on an approach of reducing harm, not, necessarily, stopping people from using drugs altogether.

By contrast, hard-punishing policies like the Philippines' narcotics campaign led by President Duterte have led to catastrophic human rights consequences in the absence of any quantifiable decrease in trafficking or consumption. Indonesia's continuing strategy with heavy reliance on draconian criminal sanctions, including the death penalty, has also failed to dissuade drug-related crime<sup>20</sup>.

India's NDPS framework though is not as extreme, is still fundamentally aligned to a punitive models that have been discredited by the global evidence. Its criminalisation of consumption

---

<sup>17</sup> Glenn Greenwald, Drug Decriminalization in Portugal (Cato Institute 2009).

<sup>18</sup> Cannabis Act 2018 (Canada)

<sup>19</sup> United Nations Office on Drugs and Crime, World Drug Report (2023).

<sup>20</sup> United Nations Office on Drugs and Crime, World Drug Report (2023).

and heavy reliance on pre-trial incarceration are putting it increasingly out of step with international norms that recognise addiction as a matter of health and not morality or criminality. Comparative analysis therefore shows the need in India to re-calibrate its drug policy in tune with the idea of harm reduction.

## THE BAIL CRISIS AND PUNISHMENT BEFORE TRIAL UNDER SECTION 37

Section 37 institutionalises one of the most stringent bail regimes in the Indian law<sup>21</sup>. Its twin conditions require courts to come to a *prima facie* belief that the accused is innocent and that he or she will not reoffend - requirements fundamentally inconsistent with the presumption of innocence. In *State of Kerala v Rajesh* (2020) 12 SCC 122, the Supreme Court reiterated the strict standard of the provision which in effect brought a quasi-trial level at the bail stage. This doctrinal inversion compels accused persons to make exculpatory material against themselves when they don't get access to the prosecution's evidence, thus perpetuating long-term incarceration<sup>22</sup>.

Prosecutorial delays, forensic backlog and NDPS courts shortage worsen pre-trial detention. Forensic laboratories take months or years to process samples on a regular basis, and with no chemical analysis report, trials cannot begin. As a result, undertrials often spend more time in gaol than the minimum sentence as per law. This attacks the principle enunciated in *Hussainara Khatoon v State of Bihar* (1980) 1 SCC 81 that includes speedy trial and converts bail denial to pre-trial punishment. The bail crisis is therefore not a by-product of misuse but it is exactly what Section 37 was designed to do.

## PROCEDURAL MISCONDUCT AND INVESTIGATION FAILURES

Procedural lapses are rampant in NDPS investigations. Officers often fail to meet the legal obligation under Section 42 to note previous information and in Section 50 to notify the accused of his right to be searched before a Magistrate or Gazetted Officer<sup>23</sup>. Chain-of-custody failures negate the integrity of samples, and delayed furnishing forensic laboratories label the evidentiary support<sup>24</sup>. Courts have regularly chastised such lapses (*Baldev Singh; Noor Aga*), but the problem of non-compliance remains systemic due to ineffectual oversight, poor training

<sup>21</sup> *State of Kerala v Rajesh* (2020) 12 SCC 122.

<sup>22</sup> *Hussainara Khatoon v State of Bihar* (1980) 1 SCC 81

<sup>23</sup> *State of Punjab v Baldev Singh* (1999) 6 SCC 172.

<sup>24</sup> *Union of India v Mohanlal* (2016) 3 SCC 379.

and institutional incentive towards arrest rather than quality of investigation<sup>25</sup>. These failures result in acquittals after long periods of imprisonment; this shows how procedural safeguards, however strong doctrinally, are weak in practise when it comes to preventing administering abuse.

## ARGUMENT

The NDPS Act represents a punitive ideology which is increasingly out of step with modern conceptions of criminal justice, public health and human rights<sup>26</sup>. At its most fundamental level, the very basis of the Act breeds on assumptions that drug use shall be deterred by criminal sanctions and that strict punishment shall lead to the incapacitation of traffickers. But empirical evidence has now and again disproved these assumptions. Criminalisation doesn't decrease the demand for drugs, instead it drives drug users into the shadows, makes them unsafe, marginalises them and prohibits any accessible care. The Act's punitive framework does not take into account the socio-medical reality of addiction that is well understood as a chronic health condition that requires a sustained therapeutic intervention as opposed to incarceration<sup>27</sup>.

The provisions relating to reverse burden under Sections 35 and 54 are inversely opposite to constitutional morality<sup>28</sup>. They shift the burden of proof to the accused and require them to corroborate negatives in abridged circumstances and in effect dilute the right to silence. This inversion of doctrine is egregious where there are small quantities involved or no more than mere consumption, where the state interest in punishment is minimal and where the harm is reducible by measures directed at health. The lack of distinction between dependent users and commercial traffickers has resulted in the indiscriminate criminalisation that loses essential gradations of culpability.

Section 37 has a hard on bail, which compounds these injustices. By forcing courts to determine innocence at some preliminary phase, this dissolves the boundary between trial and pre-trial proceedings, subverts judicial discretion and introduces an atmosphere where denial of bail is not the exception but the rule. The repeated recognition of the harshness of the provision by the Supreme Court has not been converted into doctrinal reform stemming from judicial unwillingness to recalibrate reading of statutes despite constitutional implications. The

<sup>25</sup> Noor Aga v State of Punjab (2008) 16 SCC 417.

<sup>26</sup> United Nations Office on Drugs and Crime, World Drug Report (2023).

<sup>27</sup> World Health Organization, World Health Report on Substance Use and Treatment.

<sup>28</sup> Union of India v Sanjeev V Deshpande (2014) 13 SCC 1.

practical effect is that bail becomes inaccessible to people who are accused, especially those who are from marginalised communities and do not have the resources to put forward robust legal defences.

The patterns of enforcement of NDPS Act also prove that it is incompatible with the principles of justice. Disproportionate Use of Force In policies of policing disproportionately target marginalised socio-economic groups, thereby promoting structural inequalities. The excessive reliance on visible policing, arbitrary searches and recovery-based prosecutions gives us a sense of an enforcement apparatus more geared towards symbolic rather than substantive harm to organised crime. Meanwhile, wealthy users and traffickers with significant resources often escape both scrutiny and negotiation tainted by the classes already respected by these individuals and the exercise of the law on the part of these same people.

From a comparative point of view, Indian punitive strategy is out of sync with world best practice. Nations who have implemented health-minded drug policies such as Portugal and Canada have produced demonstrably better outcomes in reducing drug related harms. These models recognise that addiction cannot be solved through criminalisation and rather needs to be met with compassion, supported medically and reintegrated socially. India's continued adherence to punitive orthodoxy reflects the way of thinking of an outdated world which ignores empirical evidence in favour of moralistic narratives.

In the light of these considerations, the NDPS Act in the current form is indefensible. It is in violation of constitutional guarantees, reinforces systemic injustice and is gratuitously destructive of the supposed objectives for which it is established. A rethink of the whole drug policy is not only desirable but necessary for India. The state needs to change from being punitive through enforcement to evidence-based harm reduction, given the fact that criminal law is an ineffective tool for dealing with complex socio-medical phenomena such as substance dependence. Reform must be based on proportionality, fairness and human dignity - values that the NDPS Act adversely seeks, systematically.

## **CONVICTION RATE PARADOX**

The conviction rate conundrum is one of the fiercest indictments of the structural failures in the NDPS Act. Despite the exceptional severity of the Act and the significant amount of resources spent on narcotic policing, conviction rates are disproportionately low - in most

Indian jurisdictions conviction rates hover anywhere between 18 and 25 percent<sup>29</sup>. This numerical reality speaks volumes about the essential weakness of an enforcement model involving a greater emphasis on arrest rather than investigation, visibility rather than intelligence, and procedural formalism rather than substantively fair. Importantly, low conviction rates speak not to a failure of courts to bring punishment to criminals, but a continued failure of enforcement agencies to construct credible cases based on legally sound procedure. Compliance with Sections 42 and 50 has been emphasised as mandatory on the courts time and again, but prosecutions are routinely affected by procedural violations such as no written documentation, lack of independent witnesses secured, samples are not sealed appropriately and there is a substantial delay in the samples being sent to forensic laboratories. These lapses not only promise to be an abomination, in terms of evidentiary integrity, they are also evidence of systemic insolence to safeguards expressly underlined to thwart abuse of the law.

Moreover, the nature of the arrests under NDPS shows a disturbing trend that persons arrested for possession of minor amounts of drugs make up the bulk of the arrests while large-scaled traffickers do not surface in the official purview. This disjunction highlights a policing model targeted at low risk, marginalised individuals who are therefore easily apprehended, hence raises enforcement measures without attacking the trafficking networks. Loss of Flexibility: Seizure Numbers and Arrest Data Restricted to Definite Dates Concealing Dispersion Highway of Inefficiency In patrolling any city or region, one's voice may vanish, lost among the anonymizing fog of cities, or perhaps one's arrest number possibly pushes a study to statistics. generated by seizure must be elected for definite days. or arrest numbers spending perhaps not be concealed. in definite days. one can make some one separate sealing you. separately sealing yourself to maybe a distinct distant. one-a-day shape or finding bounding again time. corrupt of flexible in his or her way. circulated Such metrics are therefore frequently trumpeted in the public eye, particularly in the popular media which is seeking out sensational storeys, and further incentivising "shoe-tyring" rather than disruption in supply chains concerned with doing good for the planet.

Trials in NDPS charges often collapse because of such things as: contradictions in witness statement, inconsistencies in the seizure memo, or contamination of the chain of custody. In the case of *Noor Aga v State of Punjab* (2008) 16 SCC 417, the Supreme Court explicitly

---

<sup>29</sup> National Crime Records Bureau, Crime in India (latest year with conviction statistics).

recognised that reverse burdens cannot replace strict following of procedural safeguards, but still the lower courts heavily rely on the testimony of police despite being materially inconsistent. The upshot is a system in which many people accused are kept in detention for years under the stringency of the bail system, only to be acquitted for lack of credible evidence. This is a severe violation of justice since acquittal cannot make up for the wrong that is inflicted during years of imprisonment, social stigma, and economic loss.

The paradox of NDPS enforcement is thus exposed in the conviction rate. It is reflective of a system that criminalises vulnerability whilst failing to achieve its supposed goals. So, instead of assessing the quality of investigations, or the effectiveness of dismantling trafficking networks, enforcement agencies base their notions of compliance with institutional expectations on hollow seizure statistics. This paradox ultimately reveals the fundamental flaw of NDPS Act, which is that the lawmakers based their assumption based on the fact that strict laws lead to improved enforcement. Empirical data shows the opposite of that to be decisively proven to be the case.

### **THE HUMAN COST OF NDPS IMPRISONMENT: PSYCHOLOGICAL, ECONOMIC, AND SOCIAL COSTS**

The human consequences of NDPS incarceration have meaning for far more than the legal and procedural dimensions typically analysed in doctrinal scholarship. Individuals accused under the Act - especially those who are poor socioeconomically - often suffer deep psychological distress due to long periods of pre-trial detention, social stigmatisation, and disintegration of families<sup>30</sup>. The denial of bail under Section 37 frequently leads to undertrials spending years in prison without a conviction, and thus create psychological environment marked by hopelessness, fear and trauma<sup>31</sup>. Studies associate prolonged time before trial with risk of depression, anxiety disorders, and loss of mental health, more so in overcrowded prison settings, where access to psychological counselling or treatment for drug or alcohol addiction is obtained<sup>32</sup>. The Act on the NDPs (NDPS Act) by criminalising this problem of drug dependence plays a direct role in reducing mental health outcomes in vulnerable populations and who would gain much more from medical intervention than put in gaol.

---

<sup>30</sup> National Crime Records Bureau, Prison Statistics India

<sup>31</sup> Hussainara Khatoon v State of Bihar (1980) 1 SCC 81.

<sup>32</sup> World Health Organization, World Health Report on Substance Use and Treatment.

Economically NDPS arrests are often a disaster for entire households. Many arrested people are primary earners and their incarceration creates an immediate financial crisis. Families are often burdened with heavy debts to cover court hearing legal fees or travel costs and, in many instances, women and children are pushed into precarious labour markets in order to cover for the loss of income. Even after people are acquitted, they have immense trouble getting jobs because of the associated stigma in NDPS charges. Employers often judge former NDPS undertrials as unreliable or criminally disposed, regardless of the decision in the court. This stigma helps to illustrate the ways in which NDPS incarceration creates economic precarity, which integrates families into cycles of poverty and marginalisation.

The social ramifications of enforcement of NDPS are another example of how punitive this statute is. In conservative social circles, people accused under NDPS are often ostracised, branded as addicts or criminals and banned from any social life in their community. Women especially experience enhanced social condemnation, disownership and face increased barriers to reintegration. The NDPS Act thus perpetuates the inequalities between men and women by subjecting the latter to disproportionate moral (and social) punishment. The stigma spreads to the children as well with the probability of them being discriminated in a school or at any social context because of the association to an accused parent.

Another human dimension of NDPS enforcement is that of the prison environment itself. Overcrowded facilities, poor sanitation and lack of access to healthcare add to the misery of undertrials<sup>33</sup>. Many people go into prison with underlying health conditions or substance dependence but are not treated by very little to no medical care. Instead of targeting the root causes of drug dependence (trauma, poverty, unemployment), the NDPS framework reinforces them by punishing and putting them in prison.

Collectively, the psychological, economic, and social harms that NDPS incarceration produces prove that the Act not only fails as a mechanism of drug control, it is actively producing suffering out of proportion to the offences it is meant to address. The human cost of the enforcement of NDPS underlines the urgent need for policy reform, which is built on compassion, rehabilitation and proportionality and not on punishment and exclusion.

---

<sup>33</sup> National Crime Records Bureau, Prison Statistics India (latest) and WHO prison health reports.

## IMPORTANT JUDICIAL DECISIONS AND THEIR DOCTRINE INTERPRETATION

Judicial interpretation of the NDPS Act has significantly influenced its operation and institutional development in a way that would uncover a long-running conflict of severity of statute and constitutional protections. The starting point of NDPS jurisprudence is still *State of Punjab v Baldev Singh* (1999) 6 SCC 172 wherein the Supreme Court underlined that compliance with Section 50 is not a technical ritual but its compliance is a substantive right which means that the officers must apprise the persons accused of the offence of their right to be searched before a Magistrate or Gazetted Officer. Baldev Singh had recognised procedural safeguards as an essential check against the arbitrary exercises of police powers; but there were widespread violations in different jurisdictions indicating the continued systemic failure. This doctrinal foundation was given a new depth in *Noor Aga v State of Punjab* (2008) 16 SCC 417 wherein the Court stated that there can be no reverse presumption under Section 35 and 54 unless the prosecution proves initial foundational facts such as lawful recovery and conformity with statutory procedure. *Noor Aga*, Represents a Critical Attempt to Balance Unique Challenges of NDPS Act in Preventing Constitutional Norm of Fairness.

The decision of Supreme Court in *State of Kerala v Rajesh* (2020) 12 SCC 122 also had a gross impact on jurisprudence with regard to bail policy by reinforcing the exceptional nature of twin conditions of Section 37. The Court ruled against bail unless the judge is convinced that the accused is *prima facie* not guilty - in effect, the bail hearings would become mini-trials, and entrench the problem of prolonged pre-trial detention. This strategy was strengthened in *NCB v Mohit Aggarwal* (2022) SCC OnLine SC 891, which again increased the already high bail vis-a-vis the judiciary's limited scope to exercise discretion.

The presumption of innocence as reiterated in *Kali Ram v State of Himachal Pradesh* (1973) 2 SCC 808 is in stark contrast to the presumptions of NDPS. Although this is not an NDPS case, but the articulation of the "golden thread" of criminal jurisprudence by Kali Ram creates a necessary counterpoint to the exceptions of NDPS. Similarly, the *Woolmington v DPP* [1935] AC 462, the leading English decision, which is continuing to guide the uneasiness about presumptive culpability ingrained within the NDPS framework in Indian courts.

Procedural integrity has also been further studied in *State of Rajasthan v Parmanand* (2014) 5 SCC 345 and *Arif Khan v State of Uttarakhand* (2018) 18 SCC 380 where the Supreme Court reiterated that the compliance of Section 50 should be strict and not substantial and further any

ambiguity in informing the accused of his/her rights shall operate in favour of the defence. These cases make clear the Court's insistence that procedural rights offered in such statutes are not mere formalities; and especially so for statutes imposing drastic mandatory minimum sentences.

A landmark transition took place in *Tofan Singh vs. State of Tamil Nadu* (2021) 4 SCC 1 wherein a Constitution Bench, stating of NDPS officer being a key player in that particular criminal law and a necessary professional operation of an NDPS officer working as an official police officer of state legislated police force and normally attains to the authority of being a non warrant officer under section 25, held that confessions recorded by NDPS officers under Section 67 are inadmissible because NDPS officers presumptively function as "police officers" within the meaning of Section 25 of the This ruling nullified thousands of prosecutions on which confessions were the only evidence of guilt and reaffirmed the constitutional guarantees against coerced confessions.

Issues relating to determination of quantity has been dealt in the case of *E. Micheal Raj v Intelligence Officer* (2008) 5 SCC 161 wherein the Court held that for the offences with mixture, only the content of actual pure drug should be considered in order to determine the quantity-it is not the total weight of the mixture. This principle has a major impact on sentencing, and also classifying offences as small, intermediate, or commercial.

The chain of custody and safe keeping of the seized contraband had been discussed in *Union of India vs Mohanlal* (2016) 3 SCC 379, wherein the Court laid down the procedure for proper documentation, safe keeping and disposal of the contraband to protect it from tampering or substitution. The ruling presented systemic problems of administration that are compromising the evidentiary reliability of NDPS cases.

In the *Union of India v Sanjeev V Deshpande* (2014) 13 SCC 1 it was clarified the Supreme Court held that the presumption of culpable mental state under section 35 is constitutional only if there is a laying of a credible foundation of fact by the prosecution. This case helps in limiting application of presumptions indiscriminately in minor possession case.

Conviction standards under NDPS were further scrutinised in the case of *State of Himachal Pradesh vs Kulwant Singh* 2014 5 SCC 791 where the Court stressed on the fact that considering the seriousness of the Act, small discrepancies or doubtful conditions of recovery

should owe acquittal as NDPS offences require high evidentiary caution.

Finally, *Hussaina Khatoon v State of Bihar* 1980 1SCC 81 - this again not an NDPS but that it enshrined the right to speedy trial as an essential part of Article 21. This principle is especially relevant given the massive delays, FSL pendency and lengthy pre-trial incarceration that occur in NDPS cases.

Taken together, these fifteen important judicial decisions shed light on an important doctrinal conflict in the constitutional law between statutory rigidity and the limits imposed by the Constitution's liberty protections. With unabashed professionalism, they offer an expose of how courts struggle to transport -- and don't always achieve -- the boilerplate formulation regarding the harshness of NDPS enforcement: that the courts insist upon procedural integrity, limit pre assumptions , September force evidentiary standards, and protect liberty. Yet continue misuse and giving away sentences and low conviction rates shows that judicial intervention though important cannot alone address structural defects embedded within NPDS act. The case law illustrates the potentialities and the limits of judicial correction, which in turn reflects the immediate need for, in this respect, entire legislative.

## CONCLUSION

The present analysis being done in this manuscript establishes the fact that the NDPS Act has become a statutory framework which essentially diverges from the basic tenets of criminal legal jurisprudence in India. The reverse burden provisions of the Act under Sections 35 and 54 reverse the presumption of innocence and create a burden of proof that is almost impossible for the accused to meet, and this is a doctrine radically opposed to the constitutional ethos enunciated in *Kali Ram v State of Himachal Pradesh* (1973) 2 SCC 808<sup>34</sup> and the classic dogma in *Woolmington v DPP* [1935] AC 462. When combined with the strict bail restrictions under Section 37, as interpreted strictly in the case of *State of Kerala v Rajesh* (2020) 12 SCC 122, which have only been strengthened in cases of *NCB v Mohit Aggarwal* (2022), makes pre-trial detention in effect a default status instead of being fortress. This results in extended periods of incarceration of people who may end up acquitted, thus the bail process becomes a form of punishment.

---

<sup>34</sup> *Kali Ram v State of Himachal Pradesh* (1973) 2 SCC 808. and *Woolmington v DPP* [1935] AC 462.

The sociological and human implications of this framework add new constitutional and moral dimensions to this framework. A lack of evidence shows enforcement patterns which show that far more socio-economically marginalised groups, including grassroots workers on daily wages and migrants as well as street-based users, are being targeted by NDPS policing than deconstructing sophisticated networks of trafficking. These people suffer from the weight of the Act not because they are the biggest threat to society, but because they are the most visible and vulnerable. Their arrests give the impression of sound enforcement without talking about structural failure to act on upstream trafficking.

Due to the procedural landscape, the failure of the system is further emphasized. Violations of Section 42 & 50 are rampant even though judicial plea has been sought for strict adherence in the case of *State of Rajasthan v Parmanand* (2014) 5 SCC 345 and *Arif Khan v State of Uttarakhand* (2018) 18 SCC 380. Chain-of-custody issues frowned upon in *Union of India v Mohanlal* (2016) 3 SCC 379, still portray a poor evidentiary value on seizures contributing to the low conviction rates.

Comparative global models help drive home the inadequacy of India's approach much better. Jurisdictions that have tried harm reduction - such as Portugal who followed a model of decriminalisation and Canada following a model of regulated cannabis - have achieved better public health outcomes and reduced drug-related harms without resorting to incarceration. These models recognise that addiction is a public health problem and not some criminal defect.

Taken together then, the doctrinal, sociological, procedural, and comparative analyses suggest that rather than the misuse of the NDPS Act being an incidental by-product of lax enforcement or law enforcement, it is a foreseeable result of a statute structurally designed to be used in this manner. Disproportionality in Voting Rights Due process and equal protection safeguards must be denounced in remedial elections. The novel Presumption law, hereby has a restrictive regime of bail and high vulnerabilities to procedural error the system fails to fulfill tailor drug dependency and drug trafficking, a problematic. For the NDPS framework to deliver on its professed goals (without sacrificing constitutional values), far-reaching reform is much needed. This must involve recalibrating bail standards, reducing reverse burdens, ensuring strict procedural compliance and leaning more toward a health-oriented and rights-based approach to narcotics regulation.

## RECOMMENDATIONS

Reforming the NDPS Act involves a multi-dimensional overhaul in these issues as well as addressing distortions in the doctrine, procedural failures, patterns of enforcement and the underlying philosophical assumptions of India's drug policy. The first, and most urgent reform, is in the area of the bail regime under Section 37. As shown here and throughout this manuscript, the provision has the effect of turning the bail stage into a rushed adjudication of guilt, requiring persons accused to prove innocent without being allowed full access to evidence. Parliament has to amend Section 37 to regain the original flexibility in judicial intervention and make the bail condition consistent with the standard of legality of personal liberty guaranteed under Article 21 of the Indian Constitution. Courts should be allowed to hear factors like criminal antecedents, risk of absconding, probability of tampering with evidence and nature of offence instead of being held back by rigid barriers set out in statutes.

Second, the provisions on the reverse burden under section 35 and section 54 require them to be recalibrated on principles of proportionality. These provisions should only apply in the case of commercial quantities or in the case of proven networks of trafficking, and not in the case of personal use or possession in small quantities. The prosecution must present foundational facts first which are lawful search, procedural compliance, sample integrity, and credible recovery upon which no presumption exists. Legislative clarification is necessary to avoid mechanical invocation of presumptions by lower courts, leading most of the time to wrongful and unsustainable prosecutions.

Third, procedural safeguards have to be enhanced through established overseeing (compliance) that is mandatory and technologically supported. Every NDPS operation of search and seizure should be video-recorded, with audio-visual work becoming part of the case record of the operation to remove any disputes involving the right under Section 50 or on coercive practises. Compliance of Section 42 should entail digital documentation of previous information with automatic timestamps so there is openness and cannot be fabricated after-the-fact. Chain-of-custody protocols require modernisation in barcoding that will assist in tracking and maintaining the integrity of seized samples throughout from recovery to forensic examination and eventual disposal.

Fourth, forensic delays are a major factor in long gaol time and trial delays. India needs to invest in the expansion and modernisation of forensic laboratories, providing the need for

stringent timelines for the return of NDPS samples. Courts must be delved in the technology of automatic grants of bail in cases where there is undue delay in the receipt of analytical reports against the accused, which is beyond a certain time limit provided by law. Without immediate forensic examination, NDPS prosecution is speculative, and being held before trial becomes a punishment for the transgressor.

Fifth, priorities in enforcement need to change from criminalisation of minor quantity users to breaking unauthorised trafficking networks. This calls for an intelligence-based investigations rather than visibility-focused arrests. Incentive structure within policing agencies, including performance measures, which must be based on evidence of quality of investigation, not just number of arrests. Specialised anti-narcotics units with the capacity to do financial investigation, surveillance and network analysis should be established, to decrease dependence on low-yield superficial enforcement.

Finally, India needs to have a public-health approach towards drug dependency. The criminalisation of personal consumption has not reduced demand or harm-making, but instead pushed users underground and discouraging these people from getting treatment. Decriminalisation of possession for personal use, and increasing access to rehabilitation centres, medical treatment, counselling, opioid substitution therapy and harm reduction programmes like needle exchange, would bring India in line with world best practises.

Collectively, these reforms would be able to change the face of India's narcotics policy from one that is punitive, and one that is structurally out of wack, to a rational, humane, and constitutionally aligned narcotics policy. Without such reforms, then, the NDPS Act will continue to undermine justice and reproduce the cycles of marginalisation and not achieve its stated objectives to reduce drug-related harm.