WHEN WEIGHT BECOMES GUILT: QUANTITY-BASED PUNISHMENT AND PROPORTIONALITY UNDER INDIAN NARCOTICS LAW

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ABSTRACT

India's narcotics law dictates that a crime's severity is determined by the amount of substances involved. However, sentencing must go beyond the weight of the crime. This Article examines the doctrinal and the normative implications when the quantity of a substance determines the level of crime severity under the Narcotic Drugs and Psychotropic Substances Act, 1985. Using doctrinal legal research, the author examines the statutory structure, the jurisprudence on mixtures, conscious possession, reverse burdens, and the effect of bail, as well as the enforcement of the law and substance use patterns against sentencing theory. The author argues that quantity is an important classificatory element, but serves an unreliable function as a proxy for culpability, as it risks obscuring the individual's role, knowledge, dependence, and weakness in the case. The distortion has only been made worse by the shift from purity rationale to whole mixture rationale, and the effects of quantity classifications on a person's liberty before conviction. The author argues that enforcement and the total volume of seizures will not demonstrate a proportional level of culpability. The author proposes that quantity should still be a relevant consideration, but should serve a secondary role in determining an individual's level of culpability, mental state, and the need to structure an assurance of an adequate legal process. The author argues that narcotics sentencing in India should equate sentencing to an individual's level of culpability, the sentencing should be proportional, and should place an emphasis on the need for a strong legal process.

Keywords: Narcotic Drugs and Psychotropic Substances Act, sentencing proportionality, drug quantity, culpability, bail.

1.1 INTRODUCTION

Initially enacted as a control statute, The Narcotic Drugs and Psychotropic Substances Act, 1985 quickly became one of the most repressive laws in India. The constitution and policies show a dual interest in public health and the control of illicit traffic.[1] However, the punitive structures in these policies have been defined more by the deterrent philosophy and prohibition than by a theory of proportionality.[2] The most evident example is the use of the quantity of drugs in law to structure offences and create progressively severe penalties. The quantity of drugs therefore serves as evidence of drug possession and trafficking, and as a legal determinant for the course of the case, including the bail, the strategy employed by the defence during the trial, the degree of exposure to the sentence, and the options available in the appeals process.

The most significant problem with this design is that while quantity is easily measured and serves an administrative and political purpose, it has no or little relevance to mental-state, role in the organisation, control, coercion, trafficking, and drug-market domination. A drug courier may have a large shipment of drugs (a commercial quantity), and yet, have no control over the transaction, while a financer or an organizer may have no physical contact with the shipment. The law may end up punishing the drug courier, while having a large shipment of drugs, more for the crime than an organizer, who is co l du ing co trafficking.[3] The problem is not with the quantity of drugs, but the value assigned to it, which in most cases ends up being too large.

This Article contends that sentencing justice under the Act necessitates a more nuanced correspondence between quantity and culpability. It uses a doctrinal approach that is based on the Act, case law from the dominant jurisdiction, official reports, and modern scholarship on punishment and drug policy.[4] The analysis moves through five steps. First, it places the logic of quantity in the Act. Second, it assesses the construction of culpability by the courts in relation to possession, presumptions, and statements. Third, it addresses procedure and bail. Fourth, it contrasts enforcement data and the data on the manifested need for treatment. Finally, it offers a role-sensitive, proportionate theory of sentencing that would improve the alignment of penal

[1] The Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985).
[2] Government of India, "National Policy on Narcotic Drugs and Psychotropic Substances" (Department of Revenue, 2012).
[3] The Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985), ss. 27A, 29.
[4] Andrew Ashworth, *Sentencing and Criminal Justice* 102 (Cambridge University Press, Cambridge, 4th edn., 2005).

severity and individual criminal culpability.

1.2 QUANTITY, THRESHOLDS AND STATUTORY DESIGN

One of the consequences of the statutory framework is that quantity becomes the dominant criterion in the punishment of narcotics. While that choice appears straightforward, it leads to intricate and unexpected consequences, as the same quantifiable aspect shapes the classification of the offence, the prescribed minimum sentence, the restrictions on bail, and the interpretative burden that is imposed upon courts when they deal with mixtures, conspiracies, and various forms of participatory involvement.[5]

1.2.1 Quantity Categories and Legislative Design

The Act distinguishes offences based on the small quantity, quantity less than commercial quantity but greater than small quantity, and commercial quantity. The categories are specific to each substance, and the Central Government notification assigns varying thresholds for different narcotic and psychotropic drugs/substances. Essentially, this provides legislatures and enforcement agencies with a pragmatic sorting mechanism, and while it may seem precise, that is only partially accurate. The importance of quantity is determined by what is deemed as the relevant substance, how it is sampled, the presence of neutral material, and how the prosecution defines the accused's role with respect to the seized material.[6]

The purpose of quantity-based grading is to abolish the earlier uniform severity of punishment and establish sentence bands with a diverse range. However, in the case law stemming from that model, quantity is the main legal determinant of the offence's seriousness, and that is how it is adjudicated from arrest onward. The quantity of the seized substance determines police narratives, the prosecution's argument against bail, the judge's assumptions about the harm to the market as a result of the offence, and the apprehension of the defence. In practice, quantity serves the same purpose as the sentencing system's criteria, which include motive, the offender's role, the offender's financial gain, and the offender's planning, as well as the vulnerability and prior offending history of the individual.[7]

[5] *Supra* note 3.
[6] *Supra* note 3, ss. 2(viia), 2(xxiiia).
[7] *Supra* note 4.

1.2.2 Penalty Bands and the Expansion of Formal Equivalence

The at times excessive sentence lengths prescribed by the statute can be attributed to the statute's provision extending punishment to parties beyond the direct offender. It includes Abetment, conspiracy, and attempts, all of which attract the same punishment as the offence, while multiple transgressions incur more severe punishments.[3] This formal equality, from a control perspective, extends the scope of the law over the drug market. From a punishment perspective, this formal equality poses a risk of indistinguishability for different levels of participation. If charged with possession of a commercial quantity, a person with peripheral participation may be treated no differently than the person who organised the offence.[8]

This is critical, considering the direct object of a criminal law is rarely justified only by its degree of severity. The critique of Douglas Husak against overcriminalization is applicable here. A legal system may indeed suffer from overcriminalization for criminalizing a plethora of acts, but a legal system may also suffer from a lack of differentiation if the system punishes acts that may vary significantly in terms of culpability, in a similar manner.[9] In the same vein, Paul H. Robinson's distributive theory of criminal law framework places deliberate distinction of culpability at the heart of the law of punishment, and from this standard, the law of quantity of the Act remains, at best, semi-individualized.[10]

1.2.3 Mixtures, Purity and Doctrinal Reversal

The most controversial quantity issue relates to mixtures. In *E. Micheal Raj v. Intelligence Officer*, *Narcotic Control Bureau*[11], the Supreme Court described the weight of the substance containing the prohibited narcotic rather than the entire neutral mixture for the purpose of defining quantity in mixed preparations. This approach had a healthy proportionality intuition. It recognized that the same gross weight may conceivably contain radically different amounts of the active drug, and it is unjust to assume that the punishment must increase only because the illicit substance is diluted, adulterated, or is in a compounded form. The distinction was often outcome-determinative for accused persons at the marginal level of a commercial

[8] *Supra* note 3.
[9] Douglas Husak, *Overcriminalization: The Limits of the Criminal Law* 61 (Oxford University Press, New York, 1st edn., 2008).
[10] Paul H. Robinson, *Distributive Principles of Criminal Law: Who Should Be Punished How Much?* 88 (Oxford University Press, New York, 1st edn., 2008).
[11] (2008) 5 SCC 161.

quantity.

This approach changed rather dramatically in *Hira Singh v. Union of India*[12]. In this case, the Court ruled that the entire mixture or solution must be taken into account for the purpose of determining whether the seizure is of a small or a commercial quantity, and the Court specifically rejected the earlier approach based on the so-called 'purity notion'. While the ruling formalized an increase in the 'toughness' of the policy, it also reinforced the growing 'disproportionality' concerning weight. Under this, in the case of mixtures incorporating low purity, the law will treat the bulk of the carrier substance as a direct embodiment of the offender's market and moral culpability.

There are various implications of the reversal of the drug policy. A full-mixture rule can increase minimum sentencing and more aggressively oppose bail, and also change the incentives for plea and trial, even if the drug content itself is rather small. It shifts the penalty balance in a way that evidentiary concerns may be secondary to the issue of drug purity. A question relating to that issue may eventually be of less importance. Drug purity often serves as a factor of the drug's intended use as well as the drug's position in the market. This is not just a question relating to semantics. E.g., Should law be aimed at the disturbing content of the drug or the disturbing physical substance captured, or the legal authority's case built on the disturbing content captured by law? In such systems, that is key to fairness.[13]

1.3 CULPABILITY, POSSESSION AND EVIDENTIARY ATTRIBUTION

If quantity defines the offence, culpability determines whether the classification can be justly applied to a particular accused. Culpability, in the context of this law, is often presumed in the case of possession, legal presumptions, and statements obtained under investigation. These are powerful legal concepts because they turn the act of recovering the drugs into a mindset of morality, unless the courts stress the need for actual evidence.[14]

1.3.1 Conscious Possession and Reverse Burdens

The idea of conscious possession shifts focus from physical recovery to criminal responsibility.

[12] (2020) 20 SCC 272.
[13] Kevin Kwok-Yin Cheng, Sayaka Ri, et.al., "Testing the Drugs' Sentencing Guidelines: A Comparison between England and Wales and Hong Kong", 17 *Asian Journal of Comparative Law* 167 (2022).
[14] *Supra* note 3.

The law may not regard all instances of nearness to contraband as equally culpable. Still, given the operational demands of narcotics prosecutions, courts are often compelled to draw generalizations from an individual's control of premises, vehicles, luggage, or from his/her association with a coaccused. The Supreme Court, in *Noor Aga v. State of Punjab*[15], ruled that before the reverse burdens imposed by the Act come into play, the prosecution must first prove the existence of some foundational facts. This ruling is crucial as, regardless of the amount, possession alone cannot equate to knowledge, control, or wilful participation.

The reverse burdens in Sections 35 and 54 make the volume of contraband even more central, as they introduce presumptions to a culpable state of mind and possession once the foundational facts are established. These provisions are not exclusive to regulatory criminal law. However, their employment within a regime of mandatory minimum sentences should be treated with extreme caution. Jeremy Horder's treatment of fault in criminal law also illustrates why it is especially important to ensure that a punishment is warranted by a clear relation between the illegal act and the offender's culpable mental state.[16] When reverse burdens are employed, the risk is that quantity of substance recovered may, alongside the recovery, substitute the need for evidence of knowledge and intent.

1.3.2 Quantity as a Proxy for Blameworthiness

The interest in quantity is due to the illusion of objectivity. It appears to separate users from traffickers, casual possession from commercial dealing, and perpetrators from organised crime. In fact, quantity is an inadequate approximation of these distinctions. The dependent user may buy and possess a larger amount for the collective consumption of themselves and others, or in order to protect themselves from police exposure. Similarly, a low-level courier may carry a large shipment without knowing the price, source, or destination. In contrast, a planner or financier may not handle any illegal goods at all. A sentencing framework that prioritizes quantity is in danger of misidentifying the internal structure of drug transactions.[17]

Most contemporary theories of punishment do not support the idea that exposure to measurable external consequences represents the full extent of an individual's culpability. According to Nicola Lacey's theory of state punishment, the quality of crime and the political justification of

[15] (2008) 16 SCC 417.
[16] Jeremy Horder, *Ashworth's Principles of Criminal Law* 154 (Oxford University Press, Oxford, 8th edn., 2016).
[17] *Supra* note 10 at 250.

the state's legal coercion (punishment) should also be considered, not just what is visible to the administrator. The same is true for the Act.[18] In this context, quantity may be evidence of an offence's seriousness, but should not be a substitute for an analysis of an individual's role, purpose, and level of profit, as well as their degree of coercion and relative control. Without this analysis, equity in sentencing becomes an exercise in math rather than a meaningful process.

1.3.3 Section 67 Statements and Proof of Culpability

The importance of Section 67 for evidence once transformed recorded statements into a major prosecutorial instrument for narcotics-related prosecutions. This practice had a direct impact on findings of culpability as the accused's statement could provide the links among the recovery, the role, and the wider conspiracy. In *Tofan Singh v. State of Tamil Nadu*[19], the Supreme Court ruled that officers invested with powers under Section 53 are police officers within the meaning of the exclusionary rule of the Indian Evidence Act, and that confessions recorded by the police under Section 67 are not confessions for the purposes of the Act. This judgment shifted the burden of proof back to the prosecution to prove the case by way of independent evidence.

The continuing importance of this judgment can be seen in *Smt. Najmunisha v. State of Gujarat*[20], where the Court revisited convictions based on statements that could not bear the weight of the evidence, if any, placed on them. The broader legal point is that the quantity of evidence should not be allowed to replace weak evidence. After restricting confessions, the prosecution has the burden to prove to the court that in spite of the seized goods, the accused had knowledge of, and was in a position to, control and participate in the activities. In a law that prescribes harsh punishment, an inverted burden of proof, and a curtailed right to bail, the absence of evidence in order to justify a sentence is a matter of fairness.

1.4 PROCEDURE, BAIL AND THE SEVERITY OF PROCESS

Sentencing justice under the Act must be assessed beyond mere courtroom convictions. The law's course of action is its own form of punishment. Search, sampling, detention, and the

[18] Nicola Lacey, *State Punishment: Political Principles and Community Values* 172 (Routledge, London, 1st edn., 1988).
[19] (2021) 4 SCC 1.
[20] 2024 INSC 290.

interpretation of bail may dictate the standard of quantity as fair sentencing or as a premature punishment system prior to the presumption of innocence.[21]

1.4.1 Search, Sampling and Evidentiary Integrity

The integrity of the procedure determines the reliability of quantity at the stages of seizing, storing, sampling, and producing. In *Union of India v. Mohanlal*[2223], the Supreme Court of India underscored the significance of proper handling and destruction mechanisms under Section 52A. That emphasis acknowledged the pivotal reality of drug-related adjudication. When a case hinges on the nature and weight of the material seized, errors that may seem trivial at the administrative level can undermine the fairness of the prosecution. Poor sampling, broken chains of custody, and inadequate inventory can turn a measurable fact into a highly contestable and dubious fact.

Subsequent case law has reigned in automatically invalidation due to procedural sleights. In *Narcotics Control Bureau v. Kashif*[23], the Court interpreted Section 52A as more concerned with the management and disposal of evidence versus a blanket antecedent measure for conviction. This skews in favor of the prosecution. This element of concern is when a court defines a quantity but then fails to adhere to strict procedural directives. Confidence is lost in a quantity conviction if the quantity is deemed fairly to be proved. In a sentencing scheme that uses quantity, the permissible limits must be thin, almost to the breaking point.

1.4.2 Bail under Section 37

Divisions of the law that use the element of quantity the most is the law of bail. When the alleged crime, for example, is of a commercial quantity, or in other specified classifications, the law is both a constraint on the exercise of judicial discretion and a jurisprudence of the so-called twin conditions (Section 37). The Supreme Court in *State of Kerala v. Rajesh*[24] was against judicial defiance of legislative intention. This was in acknowledgement of the erosion of a person's right to freedom. In simple terms, this means that a person's right to freedom before an alleged perpetrator of an offence is proven to have commercial quantity greatly

[21] *Supra* note 4.
[22] (2016) 3 SCC 379.
[23] INSC 1045.
[24] (2020) 12 SCC 122.

impacts the sentence.

Union of India v. Md Nawaz Khan[25] and *Narcotics Control Bureau v. Mohit Aggarwal*[26] continue this line of thinking by the Court in which prolonged custody, the filing of the charge sheet, or general comments suggesting a dispute over the evidence do not meet the legal requirements. The doctrine, therefore, is that the liberty interests of the accused are outweighed by the legislative view that certain narcotics offences are particularly serious. The doctrine is more complex. The quantity of drugs becomes a crude measure of a defendants' propensity for dangerousness and guilt, and may eventually be interpreted to substitute for possession and the defendants' role in that complex crime.

Quantity of drugs requisitioned in conjunction with bail requirements creates motivated procedural justice of a commercial kind. The stigma that a charge of commercial quantity drugs creates is that the defence attorney's negotiating position becomes weakened. Commercial drug quantity charges increase the likelihood of the accused being detained in custody before the case has progressed to a sufficiently advanced stage to allow for a proper judicial review of the allegation. There is, unfortunately, a negation of the fair and just sentencing in these cases because the statutory threshold creates a situation of cumulative and coercive sentencing.[27]

1.4.3 Fair Investigation and Institutional Neutrality

Questions of institutional fairness arise with regard to the officer who both instigates and/or carries out the investigative function in the case. The issue is not necessarily with the apparent objective impartiality; it is rather with the prospect that some form of confirmation will lead the investigator to refine the assumptions he/she holds (as to the quantity of the drugs, the suspect's role, etc.). In *Mukesh Singh v. State (Narcotic Branch of Delhi)*[28], the Constitution Bench dismissed the broader argument that the absence of impartiality is evident if the informant and investigator are one and the same. The stricter suspicion, which was visible in *Mohan Lal v. State of Punjab*[29] was, at that stage, subsumed with prosecutorial discretion. It also meant that the burden of proof would shift in favor of the prosecution and against the

[25] (2021) 10 SCC 100.
[26] 2022 SCC OnLine SC 891.
[27] *Supra* note 13.
[28] (2020) 10 SCC 120.
[29] (2018) 17 SCC 627.

accused.

Although the Constitution Bench addressed the issue of the informant and investigator being one and the same, there is still the problem of fairness. If one actor performs all these functions -- the formation of the initial intelligence, the drawing up of the recovery documents, the characterization of the seized items, and the performance of the subsequent investigation -- the classification of the seized quantity is then likely to become unassailable. This problem need not be resolved by adopting the approach of axiomatic nullity. It could be dealt with through more rigorous judicial scrutiny of the records, control of sampling, integrity, and disclosure and verification independent from the process. In narcotics cases, the value of neutrality is clear, as the legal interpretation of the seized quantity is never clear in and of itself. This interpretation is, in essence, the product of the official nomenclature, and this nomenclature is likely to affect the severity of the punishment imposed, well in advance of the final adjudication.[30]

1.5 ENFORCEMENT PATTERNS, DEPENDENCE AND SENTENCING CONSEQUENCES

To formulate a defensible sentencing analysis, one must look beyond doctrine to the realities of enforcement. Official data shows where the law focuses punitive energy and how, or if, that focus meets public health needs. Those data patterns are significant because an enforcement-driven statute is executed via systems that enforce aggregate punishment.[31]

1.5.1 Enforcement Trends under the NDPS Act

Official parliamentary data indicates that, between 2020 and 2023, the Ministry of Home Affairs reported 55,622 cases of arrests under the Act, and 73,841 arrests, while the 2024 figures showed a decline. Those figures indicate the operation of a large-scale system.[32] They also indicate why the element of quantity has so much real significance. In a high-volume system, using a weighted threshold determines the level of seriousness, standardizes the narrative of the charge, and justifies custodial practices. It must be noted, however, that even

[30] Mukesh Singh v. State (Narcotic Branch of Delhi), (2020) 10 SCC 120.
[31] Ministry of Home Affairs, "Lok Sabha Unstarred Question No. 4988, Cases Registered, Arrests Made and Quantity of Drug Seized under the Narcotic Drugs and Psychotropic Substances Act, 1985 during 2020 to 2024" (April, 2025).
[32] *Ibid.*

though those practices may be efficient, they are not punishment justified. Figure 1 shows the official increase in registered cases and arrests for the period of 2020-2024.

Figure 1 depicts the official enforcement patterns over five years, showing that case registrations and arrests increased in tandem before both subsided in 2024. This comparison emphasizes that quantity-driven narcotics control takes place within a large-volume criminal process rather than the periphery of the justice system.[33]

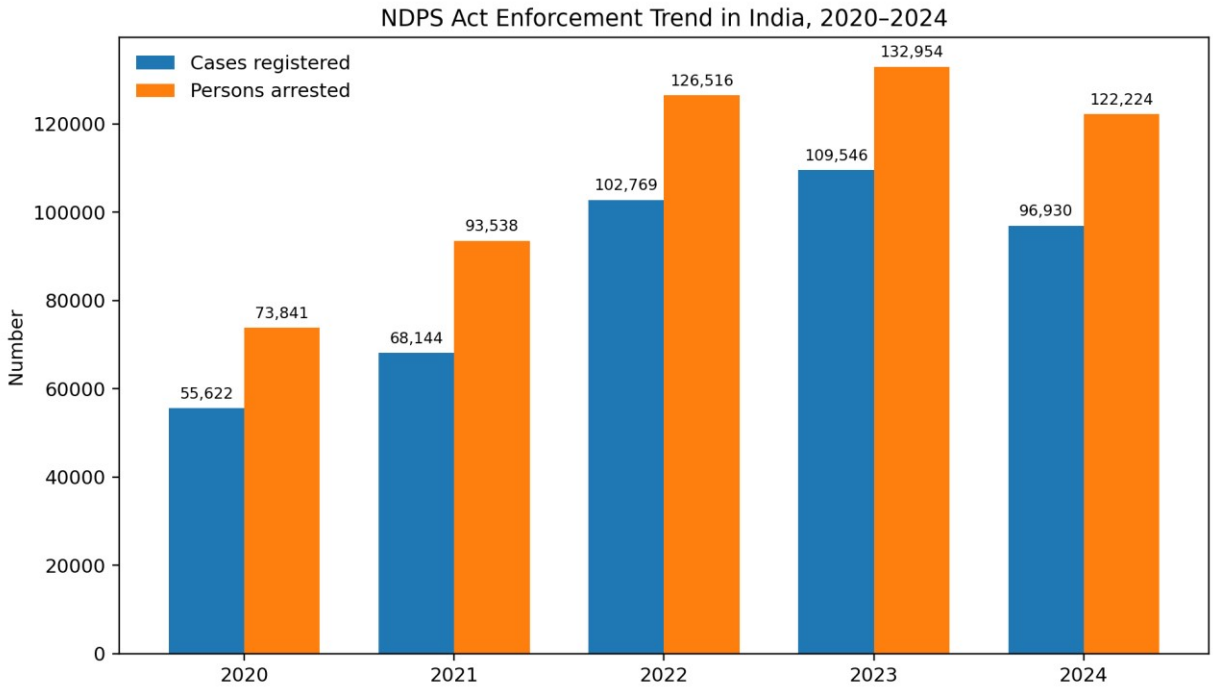

Figure 1. Registration of Cases and Arrests under the Narcotic Drugs and Psychotropic Substances Act, 1985, 2020-2024.

Source: Ministry of Home Affairs, Lok Sabha Unstarred Question No 4988 (1 April 2025).

Additional official data for 2024 recorded all-India seizures of 521,365 kilograms of opium-based drugs, 540,810 kilograms of cannabis-based drugs, 1,483 kilograms of cocaine, and 12,084 kilograms of synthetic drugs. Despite the usefulness of these figures in creating a map of the enforcement of the drug trade and the resultant market, these figures fail to show the

[33] *Supra* note 31 at 290.

distribution of the blame for the respective arrests.[34] Yatan Pal Singh Balhara and co-authors, in their analysis of the National Crime Records Bureau data, show that the arrest of individuals of substance-use vulnerabilities is now a common feature of the criminal process in the case of drug-related offences. The enforcement figures do not provide enough justifications for a sentencing framework that presumes greater severity of the offence infers greater individual blame.[35] The concentration of formal enforcement in the leading States is shown in Figure 2.

States with the highest reported case and arrest totals in 2024 are shown in Figure 2. Based on the evidence in this figure, enforcement in India is highly imbalanced and shows that the Regional arrest patterns should guide proposals for proportionality in sentencing reforms.[36]

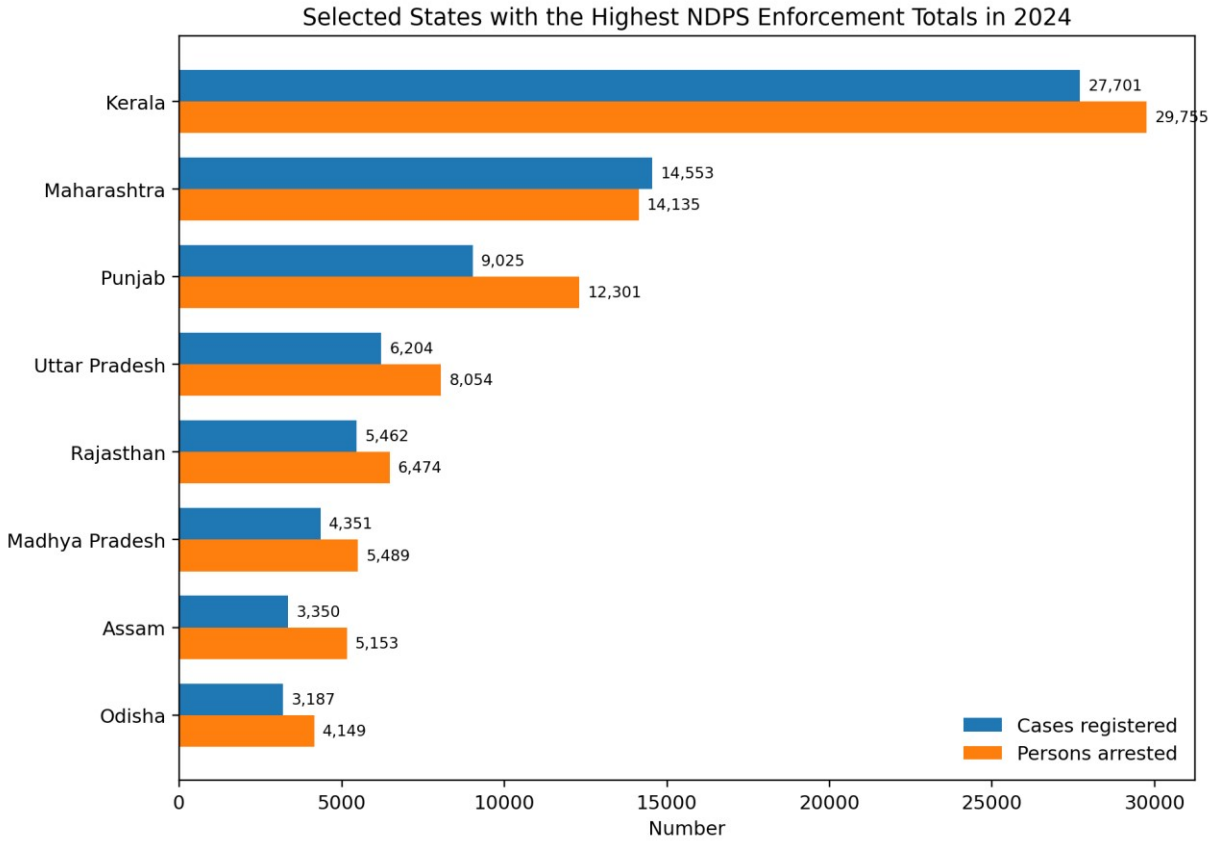

Figure 2. Top reporting States for cases and arrests under the Narcotic Drugs and Psychotropic Substances Act, 1985, for the year 2024. Source: Narcotics Control Bureau,

[34] Ministry of Home Affairs, "Lok Sabha Unstarred Question No. 634, Year and State-Wise Details of Narcotic Substances Seized during the Year 2024" (February, 2026).
[35] Yatan Pal Singh Balhara, Siddharth Sarkar, et.al., "Drug-Related Offences in India: Observations and Insights from the Secondary Analysis of the Data from the National Crimes Record Bureau", 46 *Indian Journal of Psychological Medicine* 527 (2024).
[36] *Supra* note 34 at 100.

State-wise seizures of drugs all over India by all DLEAs in the year 2024.

1.5.2 Substance Use, Treatment Need and Penal Misfit

From a public health perspective, things become more complex with the punitive logic of quantity. The National Survey on the Use of Drugs reports that the use of cannabis and opioids is prevalent. In addition, a considerable number of people in the relevant target populations of the survey need treatment as opposed to solely punitive measures.[37] This survey finding is important, as the criminal justice system often meets users, dependent persons, and lower-level intermediaries (who are also the system's first points of contact) at the same places in the system that are used to break the chain of organised crime and drug trafficking. If the law puts these categories together solely based on quantity, it may result in the system over-penalizing persons whose actions are better understood as economically dependent, both vulnerable and criminal, or participating in such activities under duress. Figure 3 places that penal debate against the context of the estimated level of demand for treatment and the use of cannabis and opioids in India.

Figure 3 shows the estimated number of users alongside the estimated number of users needing help with cannabis and opioid issues. This demonstrates that the debates on sentencing cannot be separated from the demand for treatment, as the criminal justice system engages with dependency and vulnerability alongside supply-side offending.[38]

[37] Atul Ambekar, Atul Agrawal, et.al., "Magnitude of Substance Use in India" 11 (Ministry of Social Justice and Empowerment, 2019).
[38] *Ibid.*

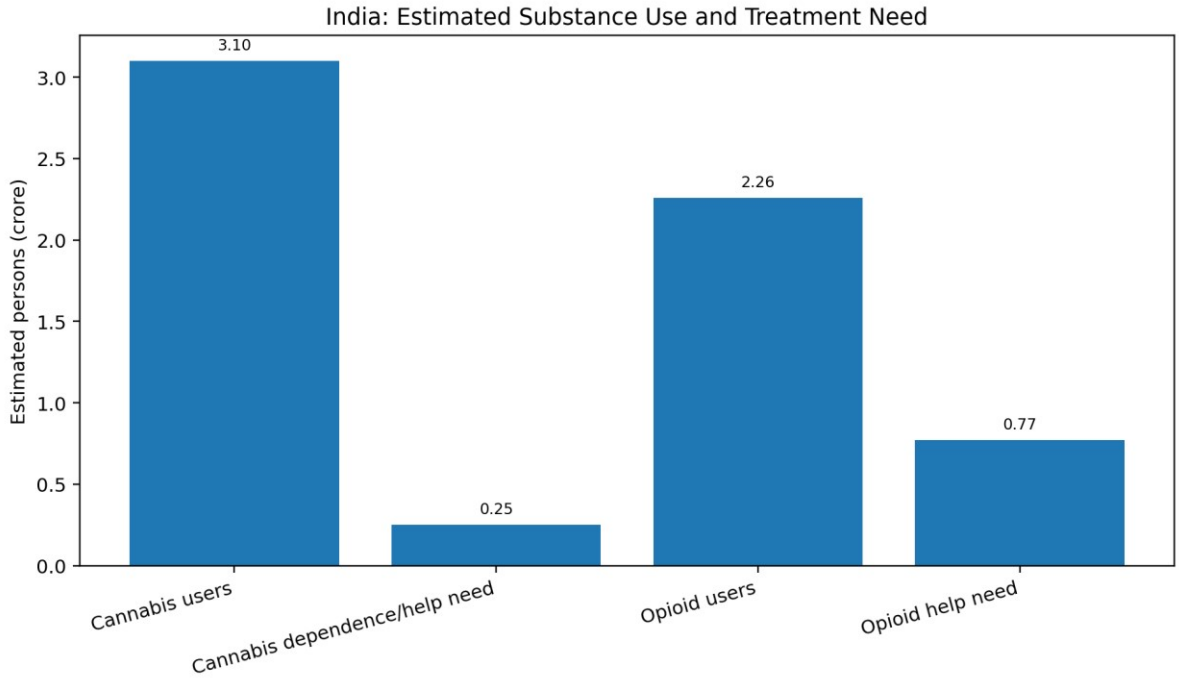

Figure 3. Estimated need for treatment in comparison with estimated cannabis and opioid use in India. Source: Ministry of Social Justice and Empowerment, National Action Plan for Drug Demand Reduction archive and the national survey on substance use in India.

International and Indian scholars have criticized narcotics regimes that restrict access to health care while increasing punitive exposure. Vallath et al. argue in the Indian context that an overly prohibitive approach has historically created a barrier to access medicinal opiates in India and has compromised the policy balance between control and care. Similar to Vallath's argument, the UNODC notes that drug markets and drug use are unequal and responses should incorporate health, care, and vulnerability instead of relying on the volume of criminal justice mechanisms.[39] It is not possible to achieve sentencing justice under the Act when drug dependence is viewed as only evidence of criminality.[40]

1.5.3 Why Enforcement Volume Cannot Replace Culpability Analysis

Although high arrest and seizure statistics may produce an impression of objective seriousness, volume does not a theory of desert make. Recent work on contemporary drugs policing shows how certain enforcement institutions misrecognize vulnerable persons first as offenders and

[39] Nandini Vallath, Tripti Tandon, et.al., "Civil Society-Driven Drug Policy Reform for Health and Human WelfareIndia", 53 *Journal of Pain and Symptom Management* 518 (2017).
[40] United Nations Office on Drugs and Crime, "World Drug Report 2025" (United Nations, 2025).

only second as victims or as participants in exploitation. That work is of great relevance to the Indian context.[41] Drug couriers, dependent users, and adolescents, as well as economically vulnerable persons who have been recruited to transport drugs, may, in the enforcement statistics of drug seizures, be viewed as a successful outcome of law enforcement, while the deeper context of the transport of drugs is obscured in quantity-driven justice.

Research on comparative policy suggests potential pitfalls of threshold structures that particularly focus on utilizing imprisonment as a punishment and diversion from addressing systemic harms. Consider the recent modeling study on felony thresholds and the possession of fentanyl. The researchers concluded that lowering thresholds would likely lead jurisdictions to greater rates of incarceration with no significant improvement to the public's health. [42] While the selected jurisdictions in the example may be largely disparate, the insight gained from them is not. When the quantity of a given substance becomes the driving force behind an escalation of the penal response, the legal system is capable of producing harsher responses, even in instances when the substance weighing more is not more dangerous, and culpability is unclear.

1.6 TOWARDS A MORE JUST SENTENCING FRAMEWORK

Sentencing law must, therefore, ensure that the system does not reward aggregate enforcement and produce greater individual punishment in the process. It requires a diverse approach to sentencing, where steps are taken to re-evaluate how quantity is used. The quantity of a substance most definitely still matters in relation to the scale of the illicit market, deterrence, harm, and providing evidence. The goal must be to re-establish the place of quantity within the sentencing mechanism and prioritize culpability, procedural assurances of justice, and a genuine need for treatment.[43]

1.6.1 Recentering Proportionality

The reform of sentencing in the case of narcotics needs to be based on the principle of proportionality. It mandates that punishment be sensitive to more than the amount of contraband. Factors to consider include the offender's knowledge and intention, the offender's

[41] Hannah Marshall, Matthew Bacon, et.al., "Emerging Victims in Contemporary Drugs Policing", 64 *British Journal of Criminology* 1292 (2024).

[42] Alexandra Savinkina, Carly Jurecka, et.al., "Mortality, Incarceration and Cost Implications of Fentanyl Felonization Laws: A Modeling Study", 121 *International Journal of Drug Policy* 104175 (2023).

[43] Mary Jean Walker, "A Proportionality Approach to the Ethics of Drug Policy", 142 *International Journal of Drug Policy* 104861 (2025).

culpable role, and the quality of the evidence through which these attributes are proved (i.e. evidence of culpable role) and are proved. Mary Jean Walker's recent work on the ethics of drug policy is useful, as it relates to the principle of proportionality and the burden that policy places on the offender, which policy only defends as rational.[44] Applied to Walker's policy principle, the answer to the question of whether the current quantity thresholds justify precluding liberty, is a 'yes' to the extent of an offender's culpability.

A proportional system would also recognize that the process is part of the punishment. A combination of extended pre-trial detention and reverse onus, evidentiary and quantity thresholds that can be classified as 'commercial' can all contribute to extreme coercion, which is not adjudicated. Andrew Ashworth's scholarship on sentencing has shown that when punishment is extended to the criminal justice system, it loses the value of being a punishment. The narcotics law in India is a great example of the insight. When the justice system already has a punitive process, the sentencing must be highly sensitive to the offender's role, the lack of evidence, and the amount (which is usually based on quantity thresholds) de facto evidence.[45]

1.6.2 Role-Sensitive Adjudication and Mitigation

The most pressing need here is the development of structured role sensitivity as a doctrine. Courts need to separate out planners, financiers, wholesalers, habitual commercial suppliers, couriers, facilitators, retail sellers who are economically dependent, and possessing clients who are bound by treatment need. Among the role specific sentencing scholarship, comparative systems of sentencing suggest that guidelines can effectively incorporate role in a hierarchy of offending while maintaining the necessary consistency. Indian law does, at present, not have a developed sentencing structure of the type described above, but the trial and appellate courts can still identify and articulate appropriate mitigating factors even in the case where quantity alone determines the sentence. It would be the case of calibrating quantity to culpability as opposed to being held captive to threshold arithmetic.[46]

The outlined model would not result in impunity for lower level actors. It would consider that not all cases involving a commercial quantity are morally and legally the same, and that

[44] *Supra* note 43 at 240.
[45] *Supra* note 4.
[46] *Supra* note 13.

punishment ought to be proportionate to the level of coercion, organisational control, profit, and role-dependent authority. It would also work to negate the perverse incentive to treat actors as equally culpable, simply because a significant seizure has taken place. The goal is to have punishment that is proportionate, not systemically lenient by design. Within a system that has hard and fast lines of legislative intent, principled mitigation is one of the only answers to systemic overreach.[47]

1.6.3 Judicial and Legislative Reform

Reform may progress, at least partly, through the courts and through Parliament. Courts can demand conscious possession standards and strict compliance with sampling and inventory requirements. They can also treat the absence of reliable, corroborative evidence, especially of commercial quantity, as significant, when the commercial quantity consequence is triggered. As an example of potential orders by Parliament, refinement of the sentencing provisions may allow for more explicit consideration of the role and the state of the victim, as well as for coercive influences. While such changes would not cause the prohibitionist framework of the Act to collapse, they would serve to minimize the risk that the quantity of substances prescribed by law may lawfully take the place of the principle of individualized justice.[48]

Going one step further, reform must address the relationship between individual moral culpability and punishment. An example of efficient punishment would be to sustain Nicola Lacey's teachings that the punishment of the state must be legitimized by a thorough consideration of public morals, structured state accountability, and justifiable coercion. In the context of drugs, the Punishability of the state must be more than just a clear stance against illegal markets. It must also include a justification of the relative severity of punishment that must be endured by the offender for the particular offence. The quantity of substances can be a part of that justification, but cannot fulfill it.[49]

1.7 CONCLUSION

An inherent imbalance is visible in the Act's doctrinal framework. Quantity is understood to signal seriousness, while fairness in narcotics punishment is contingent on a number of factors

[47] *Supra* note 10 at 279.
[48] *Supra* note 3
[49] *Supra* note 18.

evidentiary reliability, conscious possession, the actor's role, and the overall severity of the system. Without operational autonomy, quantity will dominate the sentencing calculus.[50]

The findings here show that quantity is useful and dangerous. Quantity is useful as it provides a practical legal threshold in a scenario characterized by large-scale enforcement of disproportionately mixed classes of drugs. However, it is dangerous as it creates a tendency for the courts and prosecution to consider correlations of measurable bulk as a proxy for culpability. This danger has been exacerbated by the change from a purity paradigm to one based on whole mixtures, as it directly undermines the relationship between the presence of active narcotic constituents of the mixture and the rationale for punishment. The jurisprudence regarding reverse burdens, Section 67, and Section 37 respectively express the same tendencies from yet another perspective.[51]

So, implementing the Act means having to reorder priorities, and with that, fairness in the quantity of sentences. But, quantity should only be relevant in a system that allows for reliable proof and differentiation of main actors and those on the periphery, and takes into consideration a person's dependence and vulnerability and the effects of pre-trial detention. This approach does not ignore the dangerous drug markets. This approach understands that the real drug markets make the law legit, and punishing people for what they did makes law punishing legit, and this punishment law makes a difference in what the person knew when they did it, how they did it, and how the law's punishing proves it. In Indian narcotics law this is the difference between severity and justice.[52]

1.8 SUGGESTIONS

The problems outlined above, stemming from the relationship among quantity, proof, process, and vulnerability, necessitate reform that aligns statutory adjustments with careful judicial oversight across investigations, bail, trial, and sentencing, ensuring that drug enforcement practices do not prevail over individualized justice.

1. Structured role findings: In serious drug offence cases, courts ought to document concise and precise findings regarding the defendant's involvement before sentencing,

[50] *Supra* note 16 at 273.
[51] Hira Singh v. Union of India, (2020) 20 SCC 272.
[52] Supra note 43 at 253.

considering factors such as the defendant's control over the supply, anticipated gain, judgment call, and presence of coercion or dependency.

2. Commercial quantity review notes: In all cases concerning alleged commercial drug quantities, courts should obligate the presence of a brief judicial comment, substantiating the quantity of evidence, the integrity of the sample, and purposeful possession. This practice would necessitate the judicial rationale for applying the most severe offences.

3. Targeted mitigation for dependent offenders: Sentencing Courts should regard substantiated dependence and treatment need as significant mitigating factors in cases where the offender is not found to be the organiser or financier. Using a health-related mitigation framework would enhance proportionality while sustaining the integrity of responses to the organised supply chain.

4. Corroboration discipline after Section 67: If the prosecution case is reliant on health statements, disclosures, or derivative admissions, bridging statements, and alleged involvement in a recovery-and-conspiracy continuum should be gap-bridging the court should demand independent evidence.

5. Sampling and inventory audits: High Courts need to issue guidance that mandates the regular auditing of sampling, storage, and inventory systems in line with Section 52A. In particular, the disciplined keeping of records would lessen disputes regarding the volume, and increase confidence regarding convictions that rely on weight determinations and classifications.

6. Bail reasoning linked to culpability: In relation to Section 37, the courts must examine role, possession and evidence adequately, as opposed to concluding that the issue of quantity is sufficient in and of itself. It is possible, within a constrictive legal framework, to reason a lower risk of pre-trial punishment by presumption.

7. Sentencing guidelines for narcotics cases: Law reform agencies should consider implementing a systematic approach to sentencing. This should retain quantity bands, but incorporate role, vulnerability, coercion, and prior criminal behaviour. This framework should allow for the integration of consistent transparency and

individualized sentencing.

8. Separation safeguards in investigation: Where possible, investigative agencies should disassociate the roles of informant, seizure, and investigator when dealing with serious crimes. While this cannot be regarded as a guarantee of justice, it should minimize confirmation bias, especially in prosecutions driven by quantifiable outcomes.

9. Integration of treatment pathways: Police, prosecutors, and judges need clear diversion and referral paths for people whose crimes are driven by substance dependence. An effective and just sentencing system prioritizes treatment over punitive measures for supply and distribution.

10. Publication of disaggregated sentencing data: Public agencies need to issue data at set intervals for each substance. Data should include the substance's role, the amount, bail status, and sentencing outcomes. More robust data permits courts, researchers, and policymakers to analyse if sentencing outcomes based on substance quantity are proportionate to crimes.

Bibliography

1. Books:

- Andrew Ashworth, Sentencing and Criminal Justice (Cambridge University Press, Cambridge, 4th edn., 2005).
- Douglas Husak, Overcriminalization: The Limits of the Criminal Law (Oxford University Press, New York, 1st edn., 2008).
- Jeremy Horder, Ashworth's Principles of Criminal Law (Oxford University Press, Oxford, 8th edn., 2016).
- Nicola Lacey, State Punishment: Political Principles and Community Values (Routledge, London, 1st edn., 1988).
- Paul H. Robinson, Distributive Principles of Criminal Law: Who Should Be Punished How Much? (Oxford University Press, New York, 1st edn., 2008).

2. Statutes:

- The Constitution of India, 1950.
- The Indian Evidence Act, 1872, Act No. 1 of 1872.
- The Narcotic Drugs and Psychotropic Substances Act, 1985, Act No. 61 of 1985.

3. Reports:

- Government of India, "National Policy on Narcotic Drugs and Psychotropic Substances" (Department of Revenue, 2012).
- Ministry of Home Affairs, "Lok Sabha Unstarred Question No. 4988, Cases Registered, Arrests Made and Quantity of Drug Seized under the Narcotic Drugs and Psychotropic Substances Act, 1985 during 2020 to 2024" (April, 2025).
- Ministry of Home Affairs, "Lok Sabha Unstarred Question No. 634, Year and State-Wise Details of Narcotic Substances Seized during the Year 2024" (February, 2026).

- United Nations Office on Drugs and Crime, "World Drug Report 2025" (United Nations, 2025).

4. Articles:

- Alexandra Savinkina, Carly Jurecka, et.al., "Mortality, Incarceration and Cost Implications of Fentanyl Felonization Laws: A Modeling Study", 121 International Journal of Drug Policy 104175 (2023).

- Hannah Marshall, Matthew Bacon, et.al., "Emerging Victims in Contemporary Drugs Policing", 64 British Journal of Criminology 1292 (2024).

- Kevin Kwok-Yin Cheng, Sayaka Ri, et.al., "Testing the Drugs' Sentencing Guidelines: A Comparison between England and Wales and Hong Kong", 17 Asian Journal of Comparative Law 167 (2022).

- Mary Jean Walker, "A Proportionality Approach to the Ethics of Drug Policy", 142 International Journal of Drug Policy 104861 (2025).

- Nandini Vallath, Tripti Tandon, et.al., "Civil Society-Driven Drug Policy Reform for Health and Human Welfare-India", 53 Journal of Pain and Symptom Management 518 (2017).

- Yatan Pal Singh Balhara, Siddharth Sarkar, et.al., "Drug-Related Offences in India: Observations and Insights from the Secondary Analysis of the Data from the National Crimes Record Bureau", 46 Indian Journal of Psychological Medicine 527 (2024).