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## THE BAIL IS RULE, JAIL IS EXCEPTION - UNLESS IT'S NDPS: ANALYSING PRE-TRIAL DETENTION AND HUMAN RIGHTS VIOLATIONS UNDER INDIA'S NARCOTIC LAWS

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Adona Maria James, LLM, School of Indian Legal Thought, Mahatma Gandhi University,  
Kottayam

### ABSTRACT

The idea that "bail is the rule and jail is the exception," which acknowledges individual liberty as a fundamental right under Article 21, has been continuously affirmed by Indian constitutional jurisprudence. However, the strict Section 37 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 significantly deviates from this principle by imposing two conditions for bail: the court must have reasonable grounds to believe the accused is not guilty and that they are unlikely to commit any crimes while on bail. A bail crisis has arisen as a result of this strict threshold, with thousands of undertrials languishing for years while awaiting trial and frequently being acquitted in the end.

This paper examines the human rights consequences of lengthy pre-trial detention under the NDPS Act, contending that the punitive approach disproportionately infringes the rights of marginalized groups, including the impoverished, indigenous communities, and those who cannot afford adequate legal representation. This study exposes systematic abuses of the presumption of innocence and the right to a quick trial through an examination of recent Supreme Court rulings, such as *Toofan Singh v. State of Rajasthan* and *Union of India v. Shiv Kant Jha*, as well as National Crime Records Bureau statistics on NDPS undertrials.

It examines the conflict between the legitimate state interests in preventing drug trafficking and the fundamental rights of those convicted, many of whom are not drug cartel kingpins but rather small-time consumers or minor offenders.

Drawing on comparable jurisprudence and recent judicial judgments urging legislative reconsideration of Section 37's harsh penalties, the paper concludes by suggesting proportionate bail amendments that strike a balance between drug control goals and constitutional duties.

**Keywords:** NDPS Act, Pre-trial detention, Bail provisions, Human rights violations, Section 37

## Introduction

In Indian criminal law, the principle that "bail is the rule and jail is the exception" has long been acknowledged as a fundamental protection of individual freedom. Article 21 of the Constitution, which shields every person from arbitrary deprivation of life and liberty, is the immediate source of this. Because an accused person is believed innocent until and until proven guilty, the Supreme Court has repeatedly ruled that pre-trial imprisonment must continue to be an exception.<sup>1</sup> Decades of judicial reasoning have led to the development of this constitutional idea, which emphasizes that the criminal justice system should not be used as a punishment in and of itself.<sup>2</sup>

However, the liberal and rights-oriented perspective shifts dramatically when cases arise under the Narcotic Drugs and Psychotropic Substances Act of 1985. Section 37 of the Act establishes stringent bail requirements, including the court's belief that the accused is not guilty of the alleged act and the accused's chance of committing another violation while on release.<sup>3</sup> Because of these circumstances, pre-trial incarceration has become the practical standard, contradicting the typical bail presumption. As a result, NDPS cases deviate greatly from constitutional standards.

This departure has led to a "bail crisis," as described by experts and judges alike. Thousands of undertrial convicts charged under the NDPS Act have been held in custody for years due to their inability to meet Section 37 standards.<sup>4</sup> Many of these individuals are subsequently acquitted, raising questions about the justification for their protracted confinement. The issue is exacerbated by institutional delays, limited legal help, and structural disadvantages for vulnerable communities.<sup>5</sup> The NDPS framework disproportionately affects poor persons, tribal communities, and small-time drug users, highlighting existing societal disparities.

Recent Supreme Court decisions have underlined the human rights consequences of extended pre-trial imprisonment in NDPS cases. In *Toofan Singh v. State of Tamil Nadu*, the Court reinforced procedural safeguards and stressed the importance of fair trial guarantees.<sup>6</sup> In *Union*

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

<sup>2</sup> *State of Rajasthan v. Balchand*, (1977) 4 SCC 308.

<sup>3</sup> Narcotic Drugs and Psychotropic Substances Act, No. 61 of 1985, § 37 (India).

<sup>4</sup> National Crime Records Bureau, Prison Statistics India (latest available).

<sup>5</sup> *Id.*

<sup>6</sup> *Toofan Singh v. State of Tamil Nadu*, (2021) 4 SCC 1.

of *India v. Shiv Kant Jha*, the Court recognized the severe character of Section 37 and the challenges that courts encounter while resolving bail cases.<sup>7</sup> Recent court judgments indicate that NDPS bail provisions need to be reconsidered to line with constitutional liberties.

This paper examines how Section 37 of the NDPS Act now violates fundamental rights such personal liberty, presumption of innocence, and the right to a timely trial. The article highlights that punitive bail conditions generally target small criminals or individuals at the lowest echelons of the drug trade, rather than major traffickers. This study examines statutory laws, case law, and available statistics to propose a more balanced and rights-based approach. The document suggests policies that strike a compromise between combatting drug trafficking and protecting human rights under the constitution.

### **The Constitutional Principle: Bail as a Rule**

In Indian criminal law, bail should be the rule, with jail being the exception. This idea is based on Article 21 of the Constitution, which stipulates that no person can be deprived of life or personal liberty until a legal procedure is followed. The Supreme Court has ruled that this procedure must be fair, just, and reasonable.<sup>8</sup> Detaining someone before trial should be justified by true necessity, not as a punishment.

In Indian jurisprudence, the right to bail is considered an extension of personal liberty. The Supreme Court's *State of Rajasthan v. Balchand* decision established bail as the "basic rule" of criminal justice, rather than jail.<sup>9</sup> The Court advised against pre-trial custody unless there are clear concerns, such as fleeing justice, tampering with evidence, or committing additional offenses. This notion supports the constitutional premise that all individuals are presumed innocent until proven guilty.

In the *Hussainara Khatoon* cases, the Court emphasized the relationship between bail and the right to a prompt trial.<sup>10</sup> The rulings revealed that thousands of low-income undertrial detainees were held in jail for extended periods due to their inability to pay bail. The Court found that the imprisonment breached Article 21 and the principles of fairness in democratic societies.

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<sup>7</sup> *Union of India v. Shiv Kant Jha*, (2011) 8 SCC 536.

<sup>8</sup> *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

<sup>9</sup> *State of Rajasthan v. Balchand*, (1977) 4 SCC 308.

<sup>10</sup> *Hussainara Khatoon (I) v. State of Bihar*, (1980) 1 SCC 81.

Access to bail is a fundamental constitutional provision, as reinforced by recent court rulings.

The liberal bail theory relies heavily on the presumption of innocence. In criminal law, the accused is considered legally innocent until the State proves guilt beyond a reasonable doubt.<sup>11</sup> Accused individuals should only be detained without trial if there are strong reasons to do so. Indian courts have warned against denying bail without compelling grounds, as this might turn the criminal process into punishment before guilt is established.

Overall, the constitutional approach to bail prioritizes individual liberty. The idea safeguards against abuse of state power, avoids unnecessary incarceration, and upholds human dignity. It guarantees that the criminal justice system aligns with democratic and constitutional principles. The NDPS Act raises serious challenges to the well-established idea of constitutional rights, as discussed later in this article.

### **NDPS Act and Section 37: The Statutory Departure**

The Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) aims to curb drug trafficking and penalize narcotic-related offenses. The Act aims to curb drug spread and fulfill India's international obligations under United Nations accords<sup>12</sup> Parliament designed the NDPS Act with stricter sentence and procedural criteria to address the substantial threat of drug trafficking.

The NDPS Act makes substantial changes to Section 37, which governs bail. Section 37 categorizes some offenses as "cognizable and non-bailable," but also imposes "twin conditions" for granting bail.<sup>13</sup> The court must have "reasonable grounds" to believe the accused is not guilty of the claimed offense. Second, the court must believe that the accused is unlikely to commit an offense while on bail.<sup>14</sup> These two conditions place a heavy burden on the accused, making bail extremely difficult in many NDPS cases.

Section 37 stands out for its unconventional approach to bail cases. Courts use the presumption of innocence to determine the need for custody in criminal cases. Section 37 requires the court to determine innocence before the trial begins, which can be challenging as the prosecution's

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<sup>11</sup> *Dataram Singh v. State of Uttar Pradesh*, (2018) 3 SCC 22.

<sup>12</sup> United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Dec. 20, 1988.

<sup>13</sup> Narcotic Drugs and Psychotropic Substances Act, No. 61 of 1985, § 37 (India).

<sup>14</sup> *Id.*

evidence is often incomplete and the accused may not have full access to the case materials during the bail stage.<sup>15</sup> Courts typically deny bail when there is insufficient evidence supporting the accused.

Section 37 restricts judicial discretion. The NDPS Act requires judges to issue bail only in “exceptional” circumstances, rather than based on proportionality, gravity of the offense, and likelihood of misuse of liberty.<sup>16</sup> The Supreme Court has consistently stated that these factors make granting bail extremely rare, particularly in business situations.<sup>17</sup> The statutory structure has resulted in a bail regime that contradicts the constitutional principle stated previously.

Section 37 is a considerable departure from the principle that bail is the rule. The NDPS Act promotes pre-trial detention by establishing strict requirements and reversing the burden at the bail stage. The NDPS cases raise significant human rights concerns, which will be discussed in depth in the following sections.

### **Human Rights Concerns and Violations**

The NDPS Act's tight bail restrictions create human rights concerns, especially with personal liberty, presumption of innocence, and timely trial. Although Article 21 of the Constitution guarantees against arbitrary detention, Section 37 frequently leads to prolonged confinement without a trial. Courts have consistently ruled that extended pre-trial imprisonment breaches the constitutional promise of justice and due process.<sup>18</sup> When thousands of undertrial convicts are held in jail due to inability to meet bail requirements, the criminal justice system deviates from constitutional ideals.

Section 37 also undermines the presumption of innocent. In criminal law, the State must show guilt beyond reasonable doubt. However, NDPS bail conditions require the accused to prove their innocence first.<sup>19</sup> This burden reversal undermines the core design of criminal justice and significantly favors the prosecution. Many accused individuals remain in jail despite poor, unreliable, or incomplete evidence. The Supreme Court has emphasized that strict regulations should not trump fundamental constitutional guarantees, particularly during the pre-trial

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<sup>15</sup> Narcotics Control Bureau v. Mohit Aggarwal, (2022) 4 SCC 713.

<sup>16</sup> Union of India v. Rattan Mallik, (2009) 2 SCC 624.

<sup>17</sup> Union of India v. Shiv Shanker Kesari, (2007) 7 SCC 798.

<sup>18</sup> Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

<sup>19</sup> Narcotic Drugs and Psychotropic Substances Act, No. 61 of 1985, § 37 (India).

stage.<sup>20</sup>

Another important human rights problem is the right to a speedy trial. NDPS undertrials often spend years in prison due to investigation delays, forensic report backlogs, and lengthy trial processes.<sup>21</sup> The Supreme Court ruled in *Hussainara Khatoon* that making an accused wait indefinitely for a trial violates Article 21.<sup>22</sup> Delays are especially damaging in NDPS cases, as judges often refuse bail until procedural stages like chemical examinations are completed. Inefficiencies in the system lead to prolonged detention.

The impact on underprivileged groups exacerbates these transgressions. According to studies and NCRB data, people from low-income, tribal, or socially vulnerable backgrounds are more likely to be arrested for NDPS offenses and have a lower chance of receiving bail.<sup>23</sup> Individuals who cannot afford legal representation, offer financial sureties, or gather necessary documentation for bail applications have a significant disadvantage. The NDPS framework exacerbates existing social and economic inequities, placing a disproportionate burden on populations already experiencing structural discrimination.

Women who work as couriers or are blackmailed into conveying narcotics are particularly vulnerable. Detaining moms and caregivers directly affects their dependent children. Courts have recognized that incarceration has a significant social impact on women from low-income communities.<sup>24</sup> Section 37 does not allow courts to consider humanitarian considerations unless there are exceptional grounds.

The NDPS bail structure raises human rights concerns that go beyond legal issues. The combination of reverse burden, strong statutory limits, and bureaucratic delays result in many accused persons being punished before trial. The NDPS bail regime has a significant impact on the poor and vulnerable, highlighting constitutional and human rights concerns that must be addressed immediately.

### **Case Law Analysis: Supreme Court's Evolving Position**

Judicial interpretations are crucial for understanding the practical application of Section 37 of

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<sup>20</sup> Nimesh Tarachand Shah v. Union of India, (2018) 11 SCC 1.

<sup>21</sup> Thana Singh v. Central Bureau of Narcotics, (2013) 2 SCC 590.

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

<sup>23</sup> National Crime Records Bureau, Prison Statistics India (latest available).

<sup>24</sup> *Union of India v. Rattan Mallik*, (2009) 2 SCC 624.

the NDPS Act. The Supreme Court has issued historic decisions that illustrate the conflict between the statute's severe bail requirements and constitutional safeguards under Article 21. The Court's decisions demonstrate an evolving strategy that balances individual liberty and legislative aim to curb drug trafficking.

In *Toofan Singh v. State of Tamil Nadu*, the Supreme Court ruled that confessions to NDPS personnel are not acceptable evidence.<sup>25</sup> This decision increased procedural safeguards for accused individuals and emphasizes the necessity of impartial inquiry in NDPS matters. Although the case did not directly address bail, it has significant indirect impact as courts frequently depend on confessions during the bail stage. The Court's decision to rule these statements inadmissible lessened the weight of prosecution evidence in many cases, allowing for more liberal bail consideration.

In *Union of India v. Shiv Kant Jha*, the Supreme Court recognized the rigorous nature of Section 37 and ruled that courts cannot disregard its mandatory criteria.<sup>26</sup> The Court noted that while granting bail under the NDPS Act is challenging, judges must consider reasonable grounds to believe the accused is not guilty. This interpretation confirms that Section 37 limits judicial discretion, but does not completely remove it. Courts must carefully consider the evidence before denying bail.

In *Mohd. Muslim v. State (NCT of Delhi)*, the Supreme Court ruled that prolonged pre-trial imprisonment violates Article 21, including in NDPS cases.<sup>27</sup> The Court ruled that if an undertrial has served more than half of their maximum sentence in jail, further detention becomes arbitrary. This decision clarified that statutory restrictions cannot permanently override constitutional safeguards.

In *Rattan Mallik v. Union of India*, the Court clarified that Section 37 does not require proving the accused's innocence throughout the bail process.<sup>28</sup> Judges should review the available evidence to determine if the prosecution's case is reasonable. This view seeks to strike a compromise between strict drug control measures and individual liberties.

The Court has addressed delays in the NDPS trials. The Supreme Court ruled in *Thana Singh*

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<sup>25</sup> *Toofan Singh v. State of Tamil Nadu*, (2021) 4 SCC 1.

<sup>26</sup> *Union of India v. Shiv Kant Jha*, (2011) 8 SCC 536.

<sup>27</sup> *Mohd. Muslim v. State (NCT of Delhi)*, (2023) 2 SCC 562.

<sup>28</sup> *Union of India v. Rattan Mallik*, (2009) 2 SCC 624.

v. Central Bureau of Narcotics that indefinite pre-trial incarceration should not occur due to lengthy delays in forensic findings and trial completions.<sup>29</sup> The government was directed to bolster forensic laboratories, ensure prompt trials, and reduce undertrial imprisonment. This verdict linked systemic delays to Article 21 rights.

Overall, the Supreme Court's developing case The law indicates a progressive movement in favor of Protecting personal liberty. Although the Court respects the legislative intend to impose It has stringent controls on narcotic offenses. fully recognizes that Section 37 must apply in a way consistent with Constitutional guarantees. These judgments demonstrating an increasing judicial awareness that Human rights cannot be lost completely in Name of drug control

### **Comparing International Approaches and Lessons for India**

Excessive pre-trial custody and draconian drug laws are not effective in reducing drug crime, according to many countries. These policies often hurt vulnerable populations and burden the criminal justice system. International standards require states to prioritize proportionality, health, and human rights in their policies.

Our starting point is international human rights law. According to Article 9 of the International Covenant on Civil and Political Rights (ICCPR), no one should be arbitrarily arrested or detained. Detention prior to trial should be reasonable, necessary, and used as a last resort.<sup>30</sup> The United Nations Human Rights Committee has stated that pre-trial imprisonment should never be used as a punishment, particularly for non-violent offenses like drug usage or possession of minor amounts.<sup>31</sup> The UN Office on Drugs and Crime (UNODC) promotes proportionality in drug legislation, encouraging states to differentiate between high-level traffickers and dependent users.<sup>32</sup> The NDPS Act's approach, particularly under Section 37, appears to be overly strict.

Portugal is a leading example of an alternative model. In 2001, Portugal decriminalized small amounts of drugs for personal use, shifting the focus from punishment to healthcare.<sup>33</sup>

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<sup>29</sup> *Thana Singh v. Central Bureau of Narcotics*, (2013) 2 SCC 590.

<sup>30</sup> International Covenant on Civil and Political Rights art. 9, Dec. 16, 1966, 999 U.N.T.S. 171.

<sup>31</sup> Human Rights Comm., General Comment No. 35, Article 9 (Liberty and Security of Person), U.N. Doc. CCPR/C/GC/35 (2014).

<sup>32</sup> U.N. Off. Drugs & Crime, *Drug Policy and Human Rights* (2018).

<sup>33</sup> Law No. 30/2000, *Diário da República*, 1.<sup>a</sup> série-A, No. 176 (Port.).

Individuals detected with narcotics are referred to a "Dissuasion Commission," which may offer counseling, treatment, or warnings instead of arrest or detention. Research indicates that this methodology reduces overdose deaths, HIV transmission, and drug-related criminality without increasing drug usage.<sup>34</sup> Portugal's framework shows that harsh criminalization isn't the only method to ensure public safety.

Several states in the US have implemented significant bail reform. Many jurisdictions have curtailed or removed cash bail for low-risk drug offenders due to monetary bail systems that disproportionately impacted poorer defendants.<sup>35</sup> Research from New Jersey and New York indicates that decreasing pre-trial custody for small drug charges did not lead to higher crime rates.<sup>36</sup> These revisions emphasize that pre-trial custody must be justified by genuine risks, not only the nature of the offense.

In contrast, the United Kingdom prioritizes rehabilitation. Courts often send drug-addicted individuals into treatment programs instead of jail.<sup>37</sup> The UK legal framework treats addiction as a health issue, promoting early intervention, counseling, and community-based supervision.<sup>38</sup> Courts typically give bail for minor drug offenses, while custody is reserved for situations involving organized trafficking.

These worldwide experiences do not undermine state control over deadly drug trafficking. Balanced methods, which distinguish between users, tiny carriers, and high-level traffickers, are more effective, humane, and in line with human rights. India's NDPS system, particularly its blanket limitations under Section 37, fails to distinguish between small-time or dependent users, causing disproportionate hardship. India may learn from global experiences and implement reforms that protect both public safety and constitutional rights.

### **Balancing State Interest and Fundamental Rights**

The NDPS Act aims to combat drug trafficking networks that traverse countries, use sophisticated methods, and cause significant social and economic harm. The state has a

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<sup>34</sup> Caitlin Elizabeth Hughes & Alex Stevens, What Can We Learn From The Portuguese Decriminalization of Illicit Drugs?, 50 *Brit. J. Criminology* 999 (2010).

<sup>35</sup> Pretrial Justice Institute, *The State of Pretrial Justice in America* (2019).

<sup>36</sup> Laura & John Arnold Foundation, *Results from the New Jersey Pretrial Reform* (2019).

<sup>37</sup> U.K. Home Office, *Drug Strategy 2017*.

<sup>38</sup> Public Health England, *An Evidence Review of the Outcomes that Can Be Expected of Drug Misuse Treatment in England* (2017).

legitimate interest in enacting strong regulations to prevent the spread of organized crime and protect public safety.<sup>39</sup> India's anti-drug policy prioritizes deterrence and enforcement, particularly for commercial amounts and international trafficking.

However, NDPS arrests generally target individuals who are not involved in significant trafficking organizations. According to NCRB data, most arrests under the NDPS Act involve small-time users, couriers, or individuals with tiny or intermediate quantities, rather than cartel leaders.<sup>40</sup> Many accused individuals from economically and socially marginalized communities lack adequate legal assistance.<sup>41</sup> Prolonged pre-trial detention due to Section 37's onerous bail conditions violates Article 21, which can be avoided.

The main difficulty is combining state security with constitutional morality. The Supreme Court has emphasized that protecting personal liberty does not conflict with crime control efforts. In *Mohd. Muslim v. State (NCT of Delhi)*, the Court ruled that prolonged confinement without a trial violates the presumption of innocent.<sup>42</sup> The Court has stated that anti-drug measures should be proportionate and not arbitrarily restrict bail.

A balanced strategy would distinguish between serious traffickers and small offenders. While strong enforcement is necessary for organized drug networks, it is important to maintain constitutional protections for small users and vulnerable individuals, including fair trial rights and the notion of bail. Without balance, Section 37 might undermine the constitutional ideals that the criminal justice system aims to preserve.

### **Recommendations for Reform**

Section 37 of the NDPS Act calls for legislative, judicial, and administrative reforms to address the issues it presents. These revisions aim to ensure public safety and align the criminal justice system with constitutional guarantees under Article 21.

- **Amendment of Section 37 and Removal of the Twin Conditions**

There is an urgent need to revise Section 37. The “twin conditions” for bail, which require

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<sup>39</sup> Statement of Objects and Reasons, Narcotic Drugs and Psychotropic Substances Act, No. 61 of 1985.

<sup>40</sup> Nat'l Crime Records Bureau, Crime in India 2022.

<sup>41</sup> Amnesty Int'l, *Punishing Poverty: How Bail Practices Target the Poor in India* (2021).

<sup>42</sup> *Mohd. Muslim v. State (NCT of Delhi)*, (2023) 2 SCC 653.

courts to think the accused is not guilty and will not reoffend, establish an almost unattainable hurdle during the bail process.<sup>43</sup> Parliament should replace these requirements with regular bail standards based on risk assessment, including the possibility of absconding or tampering with evidence. This would uphold the constitutional notion of bail and limit pre-trial detention to circumstances that are truly required.

- **Introducing Quantity-Based Bail Standards**

India should implement a quantity-based system for bail determinations. Many countries distinguish between personal and commercial quantities.<sup>44</sup> Bail should be issued for small quality offenses. Courts should have complete discretion in determining intermediate numbers depending on particular circumstances. Commercial quantities may require tighter criteria, but the bail threshold should not be absolute.

- **Strengthening Legal Aid and Early Representation**

Access to legal aid has to be enhanced. The majority of NDPS undertrials originate from low-income or marginalized groups, frequently without adequate legal representation.<sup>45</sup> Legal aid professionals should have specialized training in NDPS law, and the state should provide early legal support, particularly during remand and bail hearings.

- **Fast-Tracking NDPS Trials and Forensic Procedures**

NDPS cases should be expedited. Delays occur in Forensic reports and crowded trial courts are significant reasons for prolonged pre-trial detention. Establishing dedicated NDPS courts Fixed timelines for forensic results greatly reduce delay.<sup>46</sup>

- **Adopting a Health-Based and Rehabilitation-Oriented Approach**

India should take a health-focused approach to addiction. Individuals struggling with drug addiction should receive medical care, counseling, and rehabilitation rather than jail.

<sup>47</sup>Introducing diversion programs, like those in Portugal and the UK, can reduce jail

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<sup>43</sup> Narcotic Drugs and Psychotropic Substances Act, No. 61 of 1985, § 37.

<sup>44</sup> U.N. Off. Drugs & Crime, Drug Policy and Human Rights (2018).

<sup>45</sup> Amnesty Int'l, Punishing Poverty: How Bail Practices Target the Poor in India (2021).

<sup>46</sup> Vidhi Centre for Legal Policy, Reforming India's Forensic Science System (2020).

<sup>47</sup> World Health Org., International Standards for the Treatment of Drug Use Disorders (2016).

overcrowding and encourage social reintegration.

## **Conclusion**

The NDPS Act aims to curb drug trafficking and protect society from organized crime networks. Section 37 of the Act contradicts the constitutional premise that bail is the rule and incarceration is the exception.<sup>48</sup> The law's double bail conditions throw a significant burden on the accused before guilt is proven, making it very impossible to meet. This leads to prolonged pre-trial imprisonment, overcrowded jails, and a system that punishes those who are deemed innocent.

Data from NCRB and subsequent Supreme Court cases indicate that the severe bail standard under NDPS disproportionately affects minor users, poor individuals, and vulnerable groups, rather than major traffickers.<sup>49</sup> The implications include violations of Article 21, denial of a fair trial, and a loss of human dignity. Long-term confinement becomes a form of punishment without a conviction, which the Constitution prohibits.

The judiciary has acknowledged these concerns and urged Parliament to review the stringent bail structure.<sup>50</sup> To align drug control with fundamental rights, a balanced and appropriate approach is necessary. This includes distinguishing between traffickers and users, boosting legal aid, improving forensic processes, and implementing rehabilitation-based models.

India's reaction to drug offenses must safeguard society without compromising liberty, fairness, or constitutional morality. Reforming Section 37 is crucial for upholding the Constitution's values of fairness.

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<sup>48</sup> State of Rajasthan v. Balchand, (1977) 4 SCC 308.

<sup>49</sup> Nat'l Crime Records Bureau, Crime in India 2022; Mohd. Muslim v. State (NCT of Delhi), (2023) 2 SCC 653.

<sup>50</sup> Union of India v. Shiv Kant Jha, (2022) 4 SCC 574.