# HUMAN RIGHTS AND DRUG CONSUMPTION IN INDIA: RETHINKING THE NDPS ACT THROUGH ARTICLE 21

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## ABSTRACT

Drug consumption presents one of the most complex challenges at the intersection of criminal law, public health, and human rights. In India, the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) adopts a stringent legal framework aimed at curbing illicit drug use and trafficking. While the Act reflects the State's legitimate interest in safeguarding public health and maintaining public order, its application to individuals who consume drugs raises significant constitutional concerns, particularly in relation to Article 21 of the Constitution of India, which guarantees the right to life and personal liberty. This paper examines whether the existing legal framework adequately balances the objectives of drug control with the constitutional values of human dignity, health, and personal liberty.

Adopting a doctrinal and analytical research methodology, the study critically analyses the relevant provisions of the NDPS Act, judicial interpretations of Article 21, and applicable international human rights instruments relating to drug policy and rehabilitation. It evaluates whether the criminalisation of drug consumption, especially in cases involving individuals suffering from substance dependence, is consistent with the principles of proportionality, dignity, and the evolving jurisprudence of the Supreme Court of India. The paper also examines the distinction between drug consumers and traffickers within the statutory framework and assesses the effectiveness of rehabilitation-oriented provisions under the Act.

**Keywords:** Human Rights, Article 21, NDPS Act, Drug Consumption, Substance Dependence, Rehabilitation, Constitutional Law, Public Health.

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## Introduction

The growing incidence of drug consumption has emerged as one of the most significant socio-legal and public health issues related to contemporary societies. This problem crosses boundaries of nations and affects individuals irrespective of age, gender, economic status, or social background. According to the United Nations Office on Drugs and Crime (UNODC), millions of people worldwide consume narcotic drugs and psychotropic substances. The drug's consumers require medical treatment and psychosocial support rather than punitive intervention.[3] Recognising the grave threat posed by illicit narcotic drugs and psychotropic substances, Parliament enacted the *Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).* The objectives of this Act is to consolidate and amend the law relating to narcotic drugs to implement India's international treaty obligations, and provide stringent measures to control and regulate narcotic drugs and psychotropic substances.[4] The legislation was enacted with an aim to control the drugs contravention by criminalising various activities relating to narcotic drugs, like production, possession, sale, purchase, transport, and, in certain circumstances, consumption. The stringent provisions of investigation, bail, sentencing, and forfeiture reflect the legislative objective of controlling organised drug trafficking and protecting the society from the consequences of drug abuse. However, despite its legitimate objective, the application of the NDPS Act against the consumption of drugs raises complex constitutional and human rights concerns. Modern medical science increasingly recognises substance dependence as a chronic and relapsing health condition influenced by biological, psychological and socio-economic factors.[5] Consequently, an important jurisprudential question arises: *should individuals suffering from substance dependence be treated primarily as offenders deserving punishment or as patients entitled to treatment, rehabilitation, and social reintegration?* This question raises a significant within the Indian constitutional law where Article 21 guarantees that no person shall be deprived of life or personal liberty except according to a procedure established by law. Through recent judicial interpretation Article 21 has evolved beyond mere protection against executive deprivation of liberty to encompass the rights to live with dignity, health, privacy, and humane treatment.[6]

[3] United Nations Office on Drugs and Crime, *World Drug Report 2025* (United Nations Publications, Vienna, 2025).
[4] The Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985).
[5] World Health Organization, *International Standards for the Treatment of Drug Use Disorders* (WHO, Geneva, 2020).
[6] Constitution of India, Art. 21.

The judicial system developed by the Supreme Court of India has transformed Article 21 into the foundation of human rights protection tool.This Begins with the landmark decision in *Maneka Gandhi v. Union of India*, the Court held that any procedure depriving a person of life or personal liberty must be just, fair, and reasonable rather than arbitrary or oppressive.[7] Subsequently, the Court recognised that the right to life includes the right to live with human dignity with proper access to healthcare, and conditions necessary for the meaningful enjoyment of life.[8] More recently the recognition of privacy as a fundamental right has reaffirmed the constitutional commitment to individual autonomy and dignity. The supreme court simultaneously acknowledged that such rights remain subject to reasonable restrictions imposed in the larger public interest.[9] These developments require a careful examination of whether the legal response to drug consumption adequately reflects constitutional values while preserving the State's legitimate interest in controlling narcotic offences.

The debate related to drug consumption is therefore not merely a conflict between individual liberty and criminal law. It relates with a delicate balancing of competing constitutional interests. On one hand, the State holds a constitutional obligation to protect public health, maintain public order, and fulfil its international commitments to suppress illicit drug trafficking. On the other hand individuals suffering from substance dependence possess inherent dignity and remain entitled to constitutional protections guaranteed under Part III of the Constitution. A legal framework that fails to distinguish adequately between organised traffickers and persons affected by addiction risks undermining the rehabilitative objectives that are increasingly recognised within international human rights and public health discourse.

Significantly the NDPS Act reflects a limited recognition of this distinction. Provisions like Section 64A provide protection from prosecution in situations like an individual voluntarily seeking treatment for drug consumption.[10] Similarly, Section 39 empowers courts to release some offenders on probation subject to the conditions.[11] These provisions indicate that Parliament acknowledged the value of rehabilitation with criminal enforcement. But their practical implementation has remained limited and the broader statutory framework continues

[7] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.
[8] *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608.
[9] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.
[10] The Narcotic Drugs and Psychotropic Substances Act, 1985, s. 64A.
[11] *Id*., s. 39.

to be recognised by stringent penal consequences.

International developments further strengthen the need for re-examining punitive approaches towards drug consumption. International Organisations like the WHO and UNODC frequently support evidence-based policies that integrate criminal justice with public health measures, ensuring proper treatment, rehabilitation, and social reintegration for persons affected by drug consumption.[12] Comparative studies from several jurisdictions shows that carefully designed rehabilitation-oriented responses can survive with stringent action against organised drug trafficking, thereby achieving both public health and law enforcement objectives. Although India's constitutional and social context remains distinct, these developments provide valuable perspectives for evaluating the effectiveness and constitutional compatibility of the existing legal framework.

Despite a growing body of literature on narcotics law, most important discussions in India concentrate on issues such as bail, sentencing, procedural safeguards, trafficking, or statutory interpretation under the NDPS Act. Comparatively less attention has been given to examining drug consumption through the integrated framework of constitutional law, human rights and public health. There remains a need for a comprehensive analysis of whether the criminalisation of drug consumption, especially in relation to persons suffering from substance dependence, adequately aligns with the constitutional guarantees of dignity, health and personal liberty under Article 21. This paper seeks to address that gap by critically evaluating the relationship between the NDPS Act and constitutional human rights jurisprudence.

The present study adopts a doctrinal and analytical research methodology. It analyses constitutional provisions, statutory provisions of the NDPS Act, judicial precedents of the Supreme Court of India, international human rights instruments, and contemporary academic literature relating to drug policy and constitutional rights. The objective is neither to undermine the legitimacy of stringent action against illicit drug trafficking nor to advocate unrestricted personal autonomy in relation to narcotic drugs. Instead, the paper argues that constitutional governance requires a nuanced distinction between organised criminal enterprises engaged in drug trafficking and individuals affected by substance dependence.

This paper contends that while stringent enforcement against drug trafficking remains

[12] United Nations Office on Drugs and Crime & World Health Organization, *International Standards for the Treatment of Drug Use Disorders* (2nd ed., 2020).

constitutionally justified and socially indispensable, the legal response towards drug consumers should progressively adopt a rights-based and rehabilitation-oriented framework consistent with Article 21 of the Constitution. By re-examining the NDPS Act through the lens of constitutional human rights jurisprudence. The paper seeks to contribute to the evolving discourse on balancing public interest with the protection of fundamental rights in India's criminal justice system.

**Article 21 and the Human Rights Framework: Constitutional Evolution of the Right to Life and Human Dignity:**

Article 21 of the Constitution of India occupies a central position in India's constitutional framework and is widely regarded as the foundation of the protection of human rights. It provides that *"No person shall be deprived of his life or personal liberty except according to procedure established by law."[13] The constitutional text appears concise, judicial interpretation has transformed Article 21 into one of the broadest and most dynamic fundamental rights. The Supreme Court has consistently recognised that the expression "life" extends far beyond mere physical existence and embraces those conditions that enable an individual to live with dignity, health, autonomy, and meaningful participation in society.[14] This expansive interpretation is particularly relevant when examining the constitutional implications of laws regulating drug consumption.

The early constitutional interpretation of Article 21 adopted a narrow and formalistic approach. In *A.K. Gopalan v. State of Madras*, the Supreme Court held that as long as a deprivation of liberty followed a procedure established by law, judicial scrutiny was limited, even if the procedure itself appeared unreasonable.[15] This interpretation confined Article 21 to procedural legality and largely insulated legislative action from substantive constitutional review.

A significant constitutional transformation occurred with the landmark judgment in *Maneka Gandhi v. Union of India*, where the Supreme Court departed from the restrictive approach adopted in *A.K. Gopalan*.[16] The Court held that the procedure contemplated under Article 21 must be "right, just and fair" and not arbitrary, oppressive, or unreasonable. The decision

[13] Constitution of India, Art. 21.
[14] *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161.
[15] *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27.
[16] *Supra* note, 5

integrated Articles 14, 19, and 21 into a unified framework of constitutional liberty, thereby ensuring that every law affecting life or personal liberty must satisfy the requirements of fairness, non-arbitrariness, and reasonableness.

In ***Maneka Gandhi***, the Supreme Court progressively expanded the scope of Article 21 by recognising several derivative rights essential to the enjoyment of life with dignity. In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, the Court observed that the right to life includes the right to live with human dignity and all that accompanies it, including adequate nutrition, clothing, shelter, facilities for reading and expressing oneself, and opportunities for personal development.[17] Human dignity was thus recognised not merely as a moral ideal but as a constitutional value capable of shaping legislative and executive action.

Contemporary medical science acknowledges that substance dependence frequently involves complex psychological, neurological, and socio-economic factors. Individuals affected by addiction often experience social exclusion, discrimination, and reduced access to healthcare. A purely punitive legal response that disregards these realities may undermine the constitutional commitment to preserving human dignity, particularly where rehabilitation and medical intervention are more appropriate than incarceration.

The Supreme Court has similarly recognised the right to health as an integral component of Article 21. In *Consumer Education and Research Centre v. Union of India,* the Court held that the right to health and medical care constitutes a fundamental aspect of the right to life.[18] Later decisions reaffirmed that the State bears a constitutional obligation to establish conditions that enable individuals to attain the highest possible standard of physical and mental health.[19] Although these decisions primarily arose in different factual contexts, the constitutional principles they establish are equally relevant to persons suffering from substance dependence. Another important dimension of Article 21 is the recognition of individual privacy and decisional autonomy. In *Justice K.S. Puttaswamy (Retd.) v. Union of India*, a nine-judge Bench unanimously affirmed that privacy is a constitutionally protected fundamental right arising from Articles 14, 19, and 21.[20] The Court observed that privacy safeguards individual dignity, bodily integrity, and personal autonomy while simultaneously recognising that no fundamental

[17] *Supra* note, 6
[18] *Consumer Education and Research Centre v. Union of India,* (1995) 3 SCC 42.
[19] *State of Punjab v. Mohinder Singh Chawla*, (1997) 2 SCC 83.
[20] *Supra* note, 7

right is absolute. The State may impose reasonable restrictions where necessary to protect compelling public interests, including public health and national security.

The doctrine of proportionality has become an indispensable tool for evaluating restrictions upon fundamental rights. Constitutional adjudication increasingly requires that legislative measures pursuing legitimate objectives should employ means that are rational, necessary, and proportionate to the intended purpose.[21] In the context of narcotics law, the prevention of drug trafficking undoubtedly constitutes a compelling state interest. The application of identical punitive approaches to organised traffickers and individuals suffering from substance dependence may invite constitutional scrutiny where less restrictive and more effective alternatives, such as supervised treatment and rehabilitation, are available. The constitutional vision embodied in Article 21 also reflects India's commitment to international human rights principles. Although international conventions do not automatically become enforceable domestic law, the Supreme Court has consistently relied upon international human rights norms while interpreting fundamental rights where no inconsistency exists with municipal law.[22] Human dignity, access to healthcare, and protection against arbitrary state action therefore remain central interpretative principles while assessing the constitutional validity and implementation of legislation affecting vulnerable individuals.

The evolution of Article 21 demonstrates that constitutional rights are not static guarantees but living principles that respond to changing social realities. Drug dependence represents one such contemporary challenge requiring constitutional sensitivity. An approach that recognises addiction solely through the lens of criminal liability may overlook its medical and social dimensions, whereas an exclusively health-oriented model may inadequately address organised criminal networks engaged in illicit drug trafficking. The constitutional challenge therefore lies not in choosing between punishment and rehabilitation but in developing a legal framework that appropriately distinguishes between traffickers, casual consumers, and persons suffering from substance dependence. The constitutional jurisprudence under Article 21 thus provides the normative framework for reassessing the operation of the NDPS Act. The next section examines whether the statutory provisions governing drug consumption adequately reflect these constitutional principles or whether aspects of the existing legal framework require

[21] *Modern Dental College and Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353.
[22] *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

reconsideration in light of evolving human rights jurisprudence.

## The NDPS Act and Drug Consumption: A Constitutional Appraisal of the Existing Legal Framework

The enactment of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) marked a significant shift in India's legal response to narcotic drugs and psychotropic substances. Prior to its enactment, drug-related offences were primarily governed by the Opium Act, 1857, the Opium Act, 1878, and the Dangerous Drugs Act, 1930, which were considered inadequate to address the growing menace of illicit trafficking and the obligations arising from international conventions.[23] The NDPS Act was enacted to consolidate the existing legal framework, implement India's treaty obligations under the Single Convention on Narcotic Drugs, 1961, the Convention on Psychotropic Substances, 1971, and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, and to provide stringent measures for the control and regulation of narcotic drugs and psychotropic substances.[24]

The Statement of Objects and Reasons of the Act reveals that Parliament intended to combat organised drug trafficking, prevent illicit cultivation and production of narcotic substances, and regulate their medical and scientific use.[25] Consequently, the Act prescribes severe punishments, stringent bail conditions, enhanced powers of search and seizure, and strict procedural safeguards. The constitutional legitimacy of these measures has largely been upheld because narcotic trafficking poses a serious threat to public health, national security, and social stability.[26] The statutory scheme of the NDPS Act does not treat every category of offender identically. The Act distinguishes between activities such as cultivation, manufacture, possession, transportation, sale, financing illicit traffic, and consumption, prescribing different punishments depending upon the nature and gravity of the offence.[27] This legislative differentiation indicates that Parliament itself recognised varying degrees of culpability among offenders.

[23] The Opium Act, 1857; The Opium Act, 1878; The Dangerous Drugs Act, 1930.
[24] The Narcotic Drugs and Psychotropic Substances Act, 1985, Statement of Objects and Reasons; Single Convention on Narcotic Drugs, 1961; Convention on Psychotropic Substances, 1971; United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.
[25] Ibid
[26] *Union of India v. Ram Samujh*, (1999) 9 SCC 429.
[27] The Narcotic Drugs and Psychotropic Substances Act, 1985 (Act No. 61 of 1985).

Section 8 of the NDPS Act constitutes the foundational prohibition under the statute. It prohibits, except for medical or scientific purposes and in the manner authorised by law, the cultivation, production, manufacture, possession, sale, purchase, transport, warehouse, use, consumption, import, export, or transhipment of narcotic drugs and psychotropic substances.[28] This provision reflects the prohibitionist philosophy underlying the Act by criminalising a broad range of activities associated with narcotic substances. However, the breadth of Section 8 also necessitates careful judicial interpretation to ensure that criminal liability is imposed consistently with constitutional principles of fairness and proportionality.

Among the provisions specifically addressing consumers, Section 27 occupies a distinctive position. Unlike provisions dealing with trafficking or commercial possession, Section 27 prescribes comparatively lesser punishment for the consumption of specified narcotic drugs and psychotropic substances.[29] The legislative choice to prescribe a separate and less severe punishment demonstrates an implicit recognition that consumption differs fundamentally from organised trafficking. Nevertheless, the provision continues to treat drug consumption primarily through the framework of criminal liability rather than public health intervention. While the reduced punishment reflects legislative moderation, it does not entirely resolve the constitutional question of whether criminal prosecution represents the most appropriate legal response for individuals suffering from addiction.

The rehabilitative philosophy of the Act is reflected more directly in Section 64A, which grants immunity from prosecution to addicts who voluntarily seek medical treatment for de-addiction, subject to the fulfilment of prescribed statutory conditions.[30] This provision constitutes one of the most significant human rights-oriented features of the NDPS Act. It acknowledges that addiction is capable of treatment and that rehabilitation may, in appropriate cases, serve the interests of both the individual and society more effectively than punishment. However, the practical utilisation of Section 64A has remained limited due to procedural constraints, lack of awareness, inadequate rehabilitation infrastructure, and inconsistent implementation across different jurisdictions.[31] Section 39 empowers courts, in specified circumstances, to release certain offenders on probation instead of imposing immediate imprisonment.[32] The provision

[28] The Narcotic Drugs and Psychotropic Substances Act, 1985, s. 8.
[29] *Id,* s.27
[30] *Id,* s.64A.
[31] See generally Ministry of Social Justice and Empowerment, *National Action Plan for Drug Demand Reduction* (Government of India).
[32] The Narcotic Drugs and Psychotropic Substances Act, 1985, *supra* note 22, s. 39.

reinforces the legislative recognition that every offender need not necessarily be subjected to incarceration. Judicial discretion under Section 39 enables courts to consider individual circumstances, including the possibility of reformation and rehabilitation.

The constitutional significance of Sections 39 and 64A lies in their implicit acceptance of the principle that drug consumers cannot always be equated with drug traffickers. This distinction is consistent with modern criminological thought, which recognises that organised drug trafficking constitutes an enterprise motivated by financial gain, whereas drug dependence frequently involves medical, psychological, and social vulnerabilities.[33] The failure to adequately operationalise this distinction may undermine the constitutional principles of equality, proportionality, and dignity that inform Article 21.

The Supreme Court has consistently emphasised that the NDPS Act is a stringent statute enacted to address a grave social evil and that its provisions must ordinarily be enforced with due regard to legislative intent.[34] At the same time, the Court has also recognised that procedural safeguards under the Act are mandatory because of the severe consequences flowing from conviction.[35] This dual approach reflects an important constitutional principle: while the objective of suppressing illicit drug trafficking is unquestionably legitimate, enforcement must remain consistent with fairness, legality, and due process.

From a constitutional perspective, the central issue is therefore not whether the State may regulate or even criminalise drug consumption. The State undoubtedly possesses legislative competence to enact laws protecting public health and public order.[36] The constitutional inquiry concerns whether the present statutory framework adequately differentiates between categories of offenders and whether the existing balance between punishment and rehabilitation satisfies the requirements of Article 21. The evolution of constitutional jurisprudence suggests that criminal law should not merely punish unlawful conduct but should also reflect the constitutional commitment to human dignity and the possibility of reform where appropriate.

The growing recognition of substance dependence as a medical condition invites reconsideration of legal responses that rely predominantly upon criminal sanctions. Excessive

[33] World Health Organization, *International Standards for the Treatment of Drug Use Disorders* (2nd ed., 2020).
[34] *Union of India v. Ram Samujh*, *supra* note 24.
[35] *State of Punjab v. Baldev Singh*, (1999) 6 SCC 172.
[36] Constitution of India, Arts. 47, 245 and 246.

dependence upon punitive measures may discourage voluntary treatment, reinforce social stigma, and impede rehabilitation, thereby frustrating the long-term objectives of both public health policy and criminal justice administration. Conversely, an exclusively health-oriented approach without effective criminal enforcement against organised trafficking would fail to protect society from the serious harms associated with illicit narcotics. The constitutional challenge, therefore, lies in maintaining an appropriate balance between these competing considerations.

The existing framework of the NDPS Act should not be viewed as constitutionally incompatible with Article 21 merely because it criminalises certain conduct relating to narcotic drugs. Its constitutional legitimacy depends upon whether its implementation distinguishes proportionately between traffickers, occasional consumers, and persons suffering from substance dependence, while ensuring that rehabilitation remains a meaningful legal alternative wherever appropriate. It is this constitutional balance that forms the foundation for the next section, which critically examines whether the criminalisation of drug consumption can be reconciled with the principles of human dignity, proportionality, and the right to health under Article 21.

**Human Rights and Drug Consumption: Reconciling Criminal Justice with Article 21**

The criminalisation of drug consumption has remained one of the most contested issues in contemporary criminal jurisprudence. While States possess an undeniable sovereign interest in protecting public health, maintaining public order, and preventing illicit trafficking, the treatment of persons who consume narcotic drugs raises important constitutional and human rights concerns. The central constitutional question is not whether the State may regulate narcotic drugs—its legislative competence in this regard is well established—but whether the existing legal response towards drug consumers adequately reflects the constitutional values of dignity, fairness, proportionality, and rehabilitation embedded in Article 21 of the Constitution of India.

Substance dependence is now widely recognised by medical science as a chronic and relapsing health condition that requires comprehensive treatment rather than exclusively punitive intervention.[37] The World Health Organization has consistently acknowledged that addiction

[37] World Health Organization, *International Standards for the Treatment of Drug Use Disorders* (2nd ed., WHO, Geneva, 2020).

involves complex neurological, behavioural, and environmental factors that substantially affect an individual's ability to exercise informed and rational control over substance use.[38] Article 21 guarantees every person—not merely every law-abiding citizen—the right to life and personal liberty except according to a procedure established by law.[39] Through decades of constitutional interpretation, the Supreme Court has expanded this guarantee to include the right to live with dignity, the right to health, the right to humane treatment, and protection against arbitrary State action.[40] These constitutional principles impose a corresponding obligation upon the State to ensure that criminal justice policies remain fair, reasonable, and proportionate.

Human dignity constitutes the normative foundation of Article 21. In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, the Supreme Court observed that the right to life includes the right to live with human dignity and all that accompanies it.[41] Dignity requires the State to recognise the intrinsic worth of every individual irrespective of personal circumstances or social status. Persons suffering from drug dependence frequently experience stigma, discrimination, social exclusion, unemployment, and limited access to healthcare. Criminal prosecution without meaningful opportunities for treatment may aggravate these disadvantages, making rehabilitation increasingly difficult. Closely connected with dignity is the constitutional recognition of the right to health. Although the Constitution does not expressly enumerate health as an independent fundamental right, the Supreme Court has consistently interpreted Article 21 to include access to healthcare and medical assistance as indispensable components of the right to life.[42] Drug dependence often involves severe physical and psychological consequences requiring professional medical intervention. Viewed from this perspective, rehabilitation programmes, de-addiction centres, counselling services, and community-based treatment are not merely welfare measures but constitutional mechanisms capable of protecting the right to health of persons suffering from addiction.

The principle of proportionality further reinforces constitutional analysis. The doctrine requires

[38] World Health Organization, *Neuroscience of Psychoactive Substance Use and Dependence*(WHO, Geneva, 2004).
[39] Constitution of India, Art. 21.
[40] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248; *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608; *Justice K.S. Puttaswamy (Retd.) v. Union of India, (*2017) 10 SCC 1.
[41] *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608.
[42] *Consumer Education and Research Centre v. Union of India*, (1995) 3 SCC 42; *State of Punjab v. Mohinder Singh Chawla*, (1997) 2 SCC 83.

that restrictions imposed upon fundamental rights pursue a legitimate objective, possess a rational connection with that objective, remain necessary to achieve it, and avoid imposing excessive burdens upon affected individuals.[43] There is little doubt that preventing illicit drug trafficking constitutes a compelling governmental interest capable of justifying stringent criminal sanctions. However, whether identical or substantially similar punitive measures should apply to organised traffickers and persons suffering from substance dependence remains constitutionally debatable. The proportionality doctrine requires differentiation between categories of offenders according to the nature of their conduct, degree of culpability, and the legitimate objectives sought to be achieved through criminal punishment.

This distinction is partly reflected within the NDPS Act itself. Sections 27, 39, and 64A demonstrate legislative recognition that drug consumers require different legal treatment from organised traffickers.[44] Nevertheless, these provisions continue to occupy a relatively limited position within a statutory framework that is predominantly enforcement-oriented. Their limited practical application has often prevented rehabilitation from emerging as the principal response to substance dependence. The constitutional significance of rehabilitation extends beyond humanitarian considerations. Reformation has long been recognised as one of the accepted objectives of criminal jurisprudence. Modern penology increasingly rejects the notion that punishment alone effectively addresses complex social problems such as addiction. Instead, sustainable reductions in drug dependence require integrated approaches combining medical treatment, psychological counselling, family support, vocational rehabilitation, and community reintegration. Such measures not only advance individual welfare but also promote broader societal interests by reducing recidivism, improving public health outcomes, and facilitating social stability.

International human rights law similarly supports rehabilitation-oriented approaches. The Universal Declaration of Human Rights recognises the inherent dignity and equal rights of all members of the human family.[45] The International Covenant on Economic, Social and Cultural Rights recognises the right of every person to enjoy the highest attainable standard of physical and mental health.[46] Contemporary policy guidance issued jointly by the United Nations Office on Drugs and Crime and the World Health Organization recommends evidence-based treatment

[43] *Modern Dental College and Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353.
[44] The Narcotic Drugs and Psychotropic Substances Act, 1985, ss. 27, 39 and 64A.
[45] Universal Declaration of Human Rights, 1948, Preamble and Art. 1.
[46] International Covenant on Economic, Social and Cultural Rights, 1966, Art. 12.

and rehabilitation for persons with substance use disorders while encouraging States to maintain effective measures against organised illicit trafficking.[47] These instruments do not prevent States from criminalising certain conduct relating to narcotic drugs, they emphasise that public health considerations should occupy a central place in national drug policies.

It would be constitutionally incorrect to argue that Article 21 creates an unrestricted right to consume narcotic drugs. Fundamental rights exist within a constitutional order that simultaneously imposes duties upon the State to protect public health, public order, and the welfare of society. Article 47 of the Constitution expressly directs the State to endeavour to improve public health and to prohibit the consumption of intoxicating substances injurious to health except for medicinal purposes.[48] Therefore, constitutional analysis requires harmonisation rather than confrontation. Article 21 protects the dignity and rights of individuals affected by substance dependence, while Article 47 recognises the constitutional legitimacy of measures designed to reduce drug abuse and its social consequences.

The constitutional challenge therefore lies in achieving an appropriate balance. Excessively punitive approaches risk violating the principles of dignity, proportionality, and rehabilitation, whereas excessively permissive approaches may weaken efforts to combat organised narcotics networks and protect vulnerable communities. A balanced constitutional model requires uncompromising enforcement against drug traffickers while simultaneously ensuring that persons suffering from substance dependence have meaningful access to treatment, rehabilitation, and reintegration. Such an approach preserves the deterrent function of criminal law without sacrificing the constitutional commitment to human rights embodied in Article 21. The constitutional debate should not be framed as a conflict between human rights and drug control. Rather, the true constitutional objective is to develop a legal framework that effectively combats organised drug trafficking while respecting the dignity, health, and rehabilitative needs of individuals affected by addiction. Such a framework is more consistent with the evolving jurisprudence of Article 21 and better reflects the constitutional vision of a humane and welfare-oriented criminal justice system.

**Comparative Jurisprudence and International Human Rights Standards: Lessons for**

[47] United Nations Office on Drugs and Crime & World Health Organization, *International Standards for the Treatment of Drug Use Disorders* (2nd ed., 2020).
[48] Constitution of India, Art. 47.

## India

The debate surrounding drug consumption has undergone a significant transformation over the past three decades. While the global community continues to recognise illicit drug trafficking as a serious threat to public health and international security, there has been a gradual shift in the treatment of individuals who consume drugs. Many jurisdictions have moved away from an exclusively punitive model towards a balanced framework that integrates criminal justice with public health and human rights. This transition does not imply the legalisation of narcotic drugs; rather, it reflects an acknowledgment that drug dependence is a complex social and medical issue requiring evidence-based interventions in addition to criminal sanctions. These developments provide valuable insights for evaluating the Indian legal framework under the NDPS Act.

The international legal framework governing narcotic drugs is primarily based on three United Nations conventions: the Single Convention on Narcotic Drugs, 1961; the Convention on Psychotropic Substances, 1971; and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.[49] These conventions require State Parties to establish effective measures to prevent illicit trafficking and regulate the production, possession, and use of narcotic drugs. At the same time, they recognise the importance of treatment, education, aftercare, rehabilitation, and social reintegration for individuals affected by drug dependence.[50] The international human rights framework further strengthens this approach. The Universal Declaration of Human Rights affirms that all human beings are born free and equal in dignity and rights.[51] Similarly, the International Covenant on Civil and Political Rights protects the inherent dignity and liberty of every individual, while the International Covenant on Economic, Social and Cultural Rights recognises the right of every person to enjoy the highest attainable standard of physical and mental health.[52] Collectively, these instruments encourage States to formulate drug policies that protect both public health and individual rights.

[49] Single Convention on Narcotic Drugs, 1961; Convention on Psychotropic Substances, 1971; United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.
[50] Single Convention on Narcotic Drugs, 1961, Art. 38; United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, Art. 3(4)(d).
[51] Universal Declaration of Human Rights, 1948, Arts. 1 and 25.
[52] International Covenant on Civil and Political Rights, 1966; International Covenant on Economic, Social and Cultural Rights, 1966, Art. 12.

The World Health Organization and the United Nations Office on Drugs and Crime have consistently advocated evidence-based approaches to substance dependence. Their joint *International Standards for the Treatment of Drug Use Disorders* recognise addiction as a chronic but treatable health condition and recommend voluntary treatment, community-based rehabilitation, psychosocial support, and long-term recovery programmes.[53] These standards discourage approaches that rely exclusively upon incarceration, particularly where treatment would better serve the objectives of public health and social reintegration. Among comparative jurisdictions, Portugal has attracted considerable scholarly attention for its comprehensive drug policy reforms. In 2001, Portugal decriminalised the possession of small quantities of drugs intended for personal consumption while retaining criminal penalties for trafficking, production, and commercial distribution.[54] Individuals found in possession of drugs for personal use are referred to specialised administrative bodies known as the Commissions for the Dissuasion of Drug Addiction, which evaluate the person's circumstances and may recommend counselling, treatment, education, or administrative sanctions instead of criminal prosecution.[55] Contrary to common misconceptions, Portugal did not legalise narcotic drugs; rather, it replaced criminal prosecution of personal consumption with a health-centred administrative response while maintaining stringent action against organised trafficking.

The Portuguese model demonstrates that distinguishing between traffickers and consumers can coexist with effective drug control policies. Various empirical studies indicate improvements in access to treatment, reductions in stigma associated with addiction, and better public health outcomes following these reforms.[56] Although India's demographic, constitutional, and socio-economic conditions differ substantially from Portugal's, the underlying principle—that rehabilitation should play a central role in addressing substance dependence—offers valuable guidance for policy reform.

Switzerland presents another important comparative example. During the 1990s, the country adopted a comprehensive "Four Pillar Drug Policy" consisting of prevention, treatment, harm

[53] United Nations Office on Drugs and Crime & World Health Organization, *International Standards for the Treatment of Drug Use Disorders* (2nd ed., 2020).
[54] Law No. 30/2000 (Portugal), decriminalising the acquisition, possession and consumption of narcotic drugs for personal use, subject to statutory limits.
[55] Caitlin Elizabeth Hughes & Alex Stevens, "What Can We Learn from the Portuguese Decriminalization of Illicit Drugs?" (2010) 50 *British Journal of Criminology* 999.
[56] Alex Stevens, *Drugs, Crime and Public Health: The Political Economy of Drug Policy* (Routledge, 2011).

reduction, and law enforcement.[57] This integrated approach sought to reduce overdose deaths, infectious diseases, and drug-related crime through coordinated public health interventions while maintaining criminal sanctions against illicit trafficking. Supervised treatment programmes, substitution therapy, and social reintegration initiatives became integral components of national drug policy. The Swiss experience demonstrates that robust law enforcement can function alongside comprehensive healthcare strategies without weakening the State's commitment to combating organised narcotics networks. Canada has similarly embraced public health approaches in addressing substance dependence. Although the possession and trafficking of controlled substances continue to attract criminal liability under federal law, Canadian courts and public authorities increasingly recognise addiction as a health issue requiring treatment and community support.[58] Judicial decisions interpreting the Canadian Charter of Rights and Freedoms have repeatedly emphasised proportionality, procedural fairness, and respect for human dignity in criminal justice administration.[59] These constitutional values closely resemble the principles underlying Article 21 of the Indian Constitution and provide persuasive comparative guidance for balancing individual rights with public safety.

The comparative experiences of these jurisdictions reveal certain common principles. First, none of them has abandoned criminal enforcement against organised drug trafficking. Secondly, each recognises that persons suffering from substance dependence require responses different from those applicable to traffickers motivated by commercial gain. Thirdly, rehabilitation, medical treatment, counselling, and social reintegration are increasingly regarded as essential components of an effective drug policy. Finally, these jurisdictions acknowledge that public health and criminal justice are complementary rather than competing objectives.

India's constitutional framework is capable of accommodating similar principles without requiring a fundamental restructuring of the NDPS Act. Indeed, Sections 39 and 64A already provide statutory foundations for rehabilitation-oriented responses.[60] The principal challenge lies not in legislative incapacity but in implementation. Limited rehabilitation infrastructure, inadequate awareness among enforcement agencies, procedural barriers, and social stigma

[57] Federal Office of Public Health (Switzerland), *The Swiss Drug Policy* (Bern, various editions).
[58] Controlled Drugs and Substances Act, S.C. 1996, c. 19 (Canada).
[59] *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44.
[60] The Narcotic Drugs and Psychotropic Substances Act, 1985, ss. 39 and 64A.

continue to restrict the effective utilisation of these provisions.

Comparative jurisprudence should not be understood as requiring India to replicate foreign legal models. Constitutional adjudication necessarily reflects each nation's social conditions, legislative priorities, and constitutional values. Nevertheless, comparative experience provides persuasive guidance in identifying best practices capable of strengthening constitutional governance. The fundamental lesson emerging from international practice is that effective drug control need not be inconsistent with the protection of human dignity and public health. Rather, sustainable drug policy requires a calibrated balance between strong criminal enforcement against organised trafficking and evidence-based rehabilitation for persons affected by substance dependence. Viewed through the lens of Article 21, these comparative developments reinforce the argument that constitutional legitimacy depends not solely upon the existence of criminal sanctions but upon the manner in which those sanctions are applied. A legal framework that distinguishes between traffickers and persons suffering from addiction, expands opportunities for treatment, and protects human dignity while preserving effective law enforcement is more likely to satisfy both constitutional and international human rights standards.

**Recommendations**

The preceding analysis demonstrates that the constitutional debate surrounding drug consumption in India is not a question of choosing between human rights and effective drug control. Rather, the challenge lies in designing a legal framework that simultaneously protects public health, suppresses organised drug trafficking, and preserves the constitutional guarantees of dignity, liberty, and health embodied in Article 21 of the Constitution. While the NDPS Act, 1985 has undoubtedly played a significant role in combating illicit drug trafficking, its implementation reveals the need for a more balanced and rights-oriented approach towards individuals suffering from substance dependence.

The first and most important reform should be the adoption of a *clear legal distinction between drug traffickers and drug-dependent individuals*. The NDPS Act already differentiates between various categories of offences by prescribing different punishments and by incorporating rehabilitative provisions such as Sections 39 and 64A.[61] However, these provisions remain

[61] *Id*, ss. 27, 39 and 64A.

underutilised in practice. Law enforcement agencies, prosecutors, and courts should adopt a purposive interpretation that recognises the different objectives underlying prosecution of traffickers and rehabilitation of persons suffering from addiction. Such an approach would be more consistent with the constitutional doctrine of proportionality and the principles of substantive fairness under Article 21. The effective implementation of ***Section 64A*** deserves greater institutional attention. Although the provision grants immunity from prosecution to addicts who voluntarily seek treatment under prescribed conditions, its practical application has remained limited due to procedural uncertainty, inadequate awareness, and the shortage of recognised de-addiction facilities.[62] The Government should formulate uniform operational guidelines for investigating agencies and trial courts to ensure that eligible persons are informed of their statutory rights and are provided timely access to treatment. Without adequate institutional support, the rehabilitative objective of Section 64A cannot be fully realised. Greater emphasis should be placed on *rehabilitation and social reintegration*. Addiction frequently results in social isolation, unemployment, family disintegration, and psychological trauma. Consequently, successful recovery requires more than medical detoxification. Comprehensive rehabilitation should include psychological counselling, vocational training, educational support, community participation, and post-treatment monitoring. Such measures not only advance the individual's constitutional right to health and dignity but also reduce the likelihood of relapse and repeat offending. Investment in rehabilitation infrastructure should therefore be viewed as an essential component of effective criminal justice administration rather than merely a welfare initiative.

Another important reform concerns the *capacity-building of law enforcement agencies and the judiciary*. Police officers, prosecutors, prison authorities, and judicial officers should receive specialised training regarding the medical dimensions of substance dependence, constitutional safeguards under Article 21, and the rehabilitative provisions contained in the NDPS Act. Such training would facilitate more informed decision-making while ensuring that statutory powers are exercised consistently with constitutional values. Increased coordination between criminal justice institutions, healthcare professionals, and social welfare agencies would further strengthen the implementation of rehabilitation-oriented measures.

The constitutional objective of protecting public health also requires the expansion of *government-supported de-addiction and mental health services*. Access to affordable and

[62] *Id,* s. 64A.

evidence-based treatment remains uneven across different regions of India, particularly in rural and economically weaker areas. Strengthening public healthcare infrastructure, increasing the number of recognised treatment centres, and integrating addiction treatment into the broader public health system would significantly enhance the effectiveness of existing legal provisions. These measures would also give practical effect to the constitutional obligation of the State to improve public health under Article 47 of the Constitution.[63]

At the policy level, greater reliance upon *scientific evidence and empirical research* should inform future legislative and administrative reforms. Drug policy should be periodically evaluated through reliable data concerning patterns of drug consumption, rates of relapse, treatment outcomes, and the effectiveness of rehabilitation programmes. Evidence-based policymaking enables the State to adopt interventions that achieve both constitutional and public health objectives while avoiding unnecessary criminalisation.

The constitutional balance therefore lies in recognising that *drug traffickers and drug-dependent individuals do not occupy the same legal or moral position*. While traffickers deliberately exploit addiction for commercial gain, persons suffering from substance dependence frequently require medical treatment, psychological assistance, and opportunities for reintegration into society. A legal framework that fails to recognise this distinction risks undermining both constitutional justice and effective public policy.

This study has argued that the relationship between human rights and drug control should not be viewed as inherently adversarial. The constitutional objective is neither unconditional personal autonomy nor absolute prohibition, but a carefully balanced legal framework that simultaneously protects society from organised drug crime and preserves the dignity and rights of individuals affected by addiction. Such an approach reflects the true spirit of Article 21, harmonises Fundamental Rights with the Directive Principles of State Policy, and aligns Indian drug policy with evolving international human rights standards.

## Conclusion

The NDPS Act remains an indispensable instrument for combating illicit narcotic trafficking in India. Nevertheless, its constitutional legitimacy in relation to drug consumers depends upon its ability to distinguish punishment from rehabilitation and criminality from illness. A rights-

[63] Constitution of India, Art. 47.

based interpretation that strengthens rehabilitation without compromising stringent action against traffickers represents the most constitutionally sustainable path forward. Such an approach not only advances the objectives of criminal justice but also reaffirms the constitutional commitment to human dignity, public health, and the rule of law.

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