



ISSN: 2583-7753

LAWFOYER INTERNATIONAL JOURNAL OF DOCTRINAL LEGAL RESEARCH

[ISSN: 2583-7753]

Volume 4 | Issue 1

2026

DOI: <https://doi.org/10.70183/lijdlr.2026.v04.111>

© 2026 LawFoyer International Journal of Doctrinal Legal Research

Follow this and additional research works at: www.lijdlr.com

Under the Platform of LawFoyer – www.lawfoyer.in

After careful consideration, the editorial board of LawFoyer International Journal of Doctrinal Legal Research has decided to publish this submission as part of the publication.

In case of any suggestions or complaints, kindly contact (info.lijdlr@gmail.com)

To submit your Manuscript for Publication in the LawFoyer International Journal of Doctrinal Legal Research, To submit your Manuscript [Click here](#)

PUNISHING THE VULNERABLE: WHY INDIA'S DRUG LAWS FAIL VICTIMS OF ADDICTION

Gauri Arun Bhalerao¹ & Jyoti²

I. ABSTRACT

Drug addiction in India continues to be treated primarily as a criminal issue rather than a public health concern. The Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) adopts a stringent and punishment-oriented approach, raising serious concerns regarding its fairness and effectiveness. Many individuals who consume drugs are not hardened criminals but persons struggling with psychological, social, and economic vulnerabilities. Despite this, the legal framework largely treats them as offenders rather than recognising them as victims in need of care and rehabilitation. This paper critically examines how the existing legal framework fails to protect such vulnerable individuals. It argues that strict bail conditions, fear of arrest, and social stigma do not reduce drug dependency but instead deepen marginalisation and hinder recovery. Although the law contains limited provisions for rehabilitation, their weak implementation renders them largely ineffective in practice. Adopting a victim-centred perspective, this study highlights the structural contradictions within the NDPS framework and argues for a shift towards a more balanced model that integrates legal control with public health measures. Drawing briefly on international practices, the paper demonstrates that treatment-oriented approaches produce more effective outcomes than punitive systems. The paper concludes that unless India transitions from a punishment-driven model to a rehabilitation-focused approach, the legal system will continue to harm those it is intended to protect.

II. KEYWORDS

NDPS Act, Drug Addiction, Victimology, Rehabilitation, Public Health.

¹ LL.M. (Criminal Law), Student at Maharashtra National Law University, Chhatrapati Sambhajnagar (India). Email: bhaleraogauri80@gmail.com

² LL.M. (CPGLS), Student at Babasaheb Bhimrao Ambedkar University (BBAU), Lucknow (India). Email: jyotisketcher@gmail.com

III. INTRODUCTION

Drug addiction in India is still largely handled through a criminal law approach that focuses more on punishment than on treatment. Even though medical science recognises addiction as a condition that affects a person's ability to make rational choices, the legal system continues to treat drug users as offenders, even for minor acts like possession. This creates a serious contradiction, where individuals who need care are instead pushed into the criminal justice system.³

Addiction does not develop in isolation. It is often linked to trauma, poverty, and continuous social stress. Long-term substance use changes brain function and weakens self-control, making the assumption of complete personal responsibility unrealistic. When the law ignores these realities, it ends up punishing behaviour that is actually a result of deeper problems. As a result, criminalisation increases stigma and discourages individuals from seeking help, making recovery even harder.⁴

In India, the Narcotic Drugs and Psychotropic Substances Act, 1985 is the main law governing drug offences. While the Act aims to control drug trafficking, it follows a strict and punitive approach. Provisions like Section 37 make bail difficult, and in practice, there is little distinction between drug users and traffickers. Although Sections 64A and 39 provide for treatment and probation, they are rarely used, which limits their real impact.⁵

This situation creates what can be called a "victim-offender paradox." On one hand, addiction is recognised as a health issue, but on the other, individuals are treated as criminals. This gap between law and practice leads to inconsistent outcomes and weakens the effectiveness of the system. Limited access to proper treatment facilities and harsh enforcement further push drug-dependent individuals towards marginalisation instead of recovery.

Experiences from other countries, such as Portugal, show that treating addiction as a public health issue leads to better results than strict punishment. Therefore, there is a

³ Narcotic Drugs and Psychotropic Substances Act, 1985 (India).

⁴ World Health Organization, *Neuroscience of Psychoactive Substance Use and Dependence* (2004).

⁵ NDPS Act, 1985, ss 37, 39, 64A.

need to rethink the current approach in India. A more balanced system that focuses on treatment, rehabilitation, and social reintegration, while maintaining accountability where necessary, would be more effective and humane.⁶

A. Background of the Study

The issue of drug addiction in India has grown steadily over the years, affecting individuals across different age groups, regions, and socio-economic backgrounds. What was once seen as a limited or isolated problem has now become a significant social concern with legal, health, and human rights dimensions. Despite this, the dominant response of the Indian legal system continues to focus on punishment rather than understanding the underlying causes of addiction.⁷ This approach reflects a broader assumption that drug use is a matter of personal choice and moral failure, rather than a condition shaped by vulnerability and dependence.

In reality, addiction often develops in environments marked by instability, lack of opportunity, and emotional distress. Many individuals who become dependent on drugs do so as a way to cope with difficult life circumstances, including poverty, unemployment, or mental health challenges.⁸ Over time, repeated substance use alters behaviour and reduces the ability to exercise control, making it difficult for individuals to stop even when they are aware of the harm.⁹ However, the legal framework does not always reflect this complexity. Instead, it tends to treat drug users in the same manner as those involved in trafficking or organised drug networks.

The Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) was enacted to control drug abuse and regulate narcotic substances, but its strict and punitive structure has raised concerns about its impact on individuals who are themselves victims of addiction.¹⁰ Although certain provisions within the Act recognise the need for treatment and rehabilitation, their limited scope and weak implementation reduce

⁶ European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), Drug Policy Reports; UNODC, *World Drug Report*.

⁷ Narcotic Drugs and Psychotropic Substances Act, No. 61 of 1985, pmb. (India).

⁸ World Health Organization, *Guidelines for the Identification and Management of Substance Use Disorders* 5–7 (WHO Press 2016).

⁹ *Id.* at 10–12.

¹⁰ Narcotic Drugs and Psychotropic Substances Act, No. 61 of 1985 (India)

their practical effectiveness.¹¹ As a result, there remains a gap between the intention of the law and its actual impact on the ground.

This background highlights the need to re-examine how the law understands and responds to drug addiction. It becomes important to question whether the current approach truly addresses the problem or whether it unintentionally worsens the condition of those who are already vulnerable.

“The NDPS Act, in its current form, does not merely fail to rehabilitate addicts-it actively contributes to their continued marginalisation.”

B. Significance of the Study

This study is significant because it challenges the dominant crime-centric approach in Indian drug policy and argues for a necessary shift towards a health-centric framework. It highlights how the existing legal system fails to distinguish between traffickers and drug-dependent individuals, resulting in a blanket punitive approach that disproportionately affects vulnerable groups.

The significance of this research also lies in its focus on the human side of the issue. Drug-dependent individuals are not just subjects of law; they are people dealing with complex personal, social, and psychological challenges. When the legal system treats them only as offenders, it ignores these realities and fails to offer meaningful solutions. This study therefore helps shift the conversation from punishment to understanding, and from blame to responsibility.

Another important aspect of this study is that it connects law with public health. It shows that addiction cannot be effectively addressed through strict legal control alone. Instead, it requires a balanced approach that includes treatment, rehabilitation, and social support. By analysing this connection, the study contributes to a more practical and realistic understanding of how drug-related issues should be handled.

Finally, this research is significant because it aims to contribute to legal reform. By identifying the limitations of the current framework, it provides a foundation for suggesting changes that are more humane and effective. It encourages a shift towards

¹¹ Id. §§ 39, 64A.

a system that recognises dignity, promotes recovery, and focuses on long-term solutions rather than short-term punishment.

C. Scope and Extension of the Study

1. **Legal Scope:** Primarily focuses on the NDPS Act, 1985 and its reformative sections (Sec. 39 & 64A).
2. **Geographical Scope:** Focused on the Indian legal system with a comparative study of international models (e.g., Portugal).
3. **Extension:** The study explores the intersection of Public Health, Human Rights, and Criminal Jurisprudence.

D. Research Problem

The core research problem of this study lies in the contradiction between medical understanding and legal treatment of drug addiction in India. While addiction is widely recognised as a condition that limits individual control, the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) continues to treat drug use primarily as a criminal offence.

This creates a legal paradox where drug-dependent individuals are simultaneously seen as victims in need of care and offenders deserving punishment. The law further fails to clearly distinguish between commercial traffickers and small-scale users, resulting in a blanket punitive approach that disproportionately affects vulnerable individuals.

Additionally, strict bail conditions, weak implementation of rehabilitation provisions, and social stigma prevent effective recovery and reinforce cycles of marginalisation. This raises a critical question: does the current legal framework address addiction as a health issue, or does it continue to criminalise vulnerability?

E. Literature Review

Existing literature on drug laws in India shows a growing concern about the effectiveness and fairness of the current legal framework. A significant body of research has examined the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), highlighting its strong focus on prohibition and punishment. Scholars

have observed that the Act primarily aims to control drug supply through strict legal measures, while paying comparatively less attention to the demand side of drug use, particularly the conditions that lead individuals toward addiction.¹²

Many researchers have criticised this approach for failing to recognise addiction as a public health issue. Medical and socio-legal studies consistently emphasise that substance dependence is a complex condition that requires treatment, rehabilitation, and long-term care rather than criminal sanctions.¹³ These studies point out that even though limited provisions for treatment exist within the legal framework, the act of drug consumption itself remains criminalised. As a result, individuals suffering from addiction are brought into the criminal justice system instead of being directed toward healthcare services.¹⁴

Further academic analysis has highlighted the structural limitations of the NDPS Act, particularly its failure to clearly distinguish between commercial traffickers and individuals involved in personal consumption. This lack of differentiation often leads to disproportionate consequences, where small-scale users are subjected to the same harsh legal standards as organised offenders.¹⁵ Scholars argue that such an approach not only undermines fairness but also contributes to prison overcrowding and the continued marginalisation of vulnerable individuals who require support rather than punishment.¹⁶

In addition to structural concerns, several studies have focused on the gap between legal provisions and their implementation. Although policies in India include elements of rehabilitation and demand reduction, their practical execution remains weak. Reports indicate that a large proportion of individuals suffering from substance use disorders do not receive adequate treatment, reflecting a serious deficiency in public health infrastructure.¹⁷ This disconnect between law and practice has been

¹² Narcotic Drugs and Psychotropic Substances Act, No. 61 of 1985, pmbl. (India).

¹³ World Health Organization, *Guidelines for the Identification and Management of Substance Use Disorders* 5–8 (WHO Press 2016).

¹⁴ *Id.* at 10–12.

¹⁵ R. K. Sinha, *Drug Abuse and Its Legal Control in India*, 45 *J. Indian L. Inst.* 123, 130–32 (2003).

¹⁶ United Nations Office on Drugs and Crime, *World Drug Report 2023* 40–45 (United Nations 2023).

¹⁷ Ministry of Social Justice & Empowerment, *National Action Plan for Drug Demand Reduction* 12–15 (2018).

identified as one of the major reasons for the continued failure of the system to address drug dependency effectively.

Scholars have also examined specific provisions of the NDPS Act that appear to promote rehabilitation, particularly those granting immunity or alternative treatment options. While such provisions exist in theory, their application is often inconsistent and dependent on discretionary enforcement.¹⁸ This inconsistency creates uncertainty and limits the practical benefits available to drug-dependent individuals. As a result, the rehabilitative intent of the law remains largely unrealised.

From a comparative perspective, international literature increasingly supports a shift towards harm reduction and health-based approaches. Studies on global drug policy demonstrate that systems prioritising treatment, rehabilitation, and social reintegration tend to produce better outcomes than those relying solely on punishment.¹⁹ These models highlight the importance of addressing the root causes of addiction rather than merely penalising its consequences.

Despite the availability of such literature, there remains a noticeable gap in the Indian context. Much of the existing research focuses either on legal provisions or medical aspects of addiction, with limited attention given to the issue from the perspective of victimology. In particular, the idea that drug-dependent individuals occupy a dual position as both victims and offenders has not been sufficiently explored. This study seeks to fill that gap by examining the “victim-offender paradox” within the Indian legal framework.

Overall, the existing literature clearly indicates that while the problem of drug addiction is widely acknowledged, the legal response remains fragmented and inadequate. This paper builds upon these insights and attempts to provide a more integrated and victim-centred analysis of India’s drug laws, with a focus on bridging the gap between legal control and social justice.

¹⁸ Narcotic Drugs and Psychotropic Substances Act, No. 61 of 1985, §§ 39, 64A (India).

¹⁹ Caitlin Elizabeth Hughes & Alex Stevens, *What Can We Learn from the Portuguese Decriminalization of Illicit Drugs?* 50 *Brit. J. Criminology* 999, 1005–08 (2010).

Thus, the existing scholarship identifies the problem but fails to adequately address the victim-offender contradiction, which this study seeks to critically examine.

F. Objective of the Study

1. To critically evaluate the adequacy of the NDPS Act in protecting drug-dependent individuals.
2. To analyse the gap between statutory provisions and their practical enforcement.
3. To develop a victim-centric framework for drug policy reform in India

G. Research Question

This study is guided by the following research questions:

1. Whether the existing framework under the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) effectively recognises and addresses the socio-economic and psychological vulnerabilities of drug-dependent individuals?
2. To what extent does the strict application of bail provisions, particularly under Section 37 of the NDPS Act, hinder access to treatment and rehabilitation for drug-dependent persons?
3. Does the current legal approach in India create a “victim-offender paradox” by simultaneously recognising addiction as a health issue while criminalising its consequences?
4. How far does the gap between rehabilitative provisions in law and their actual implementation contribute to the continued marginalisation of drug-dependent individuals?
5. What lessons can be drawn from international models to reform India’s drug policy towards a more health-oriented and victim-centric approach?

H. Hypothesis

The study proceeds on the hypothesis that the predominantly punitive enforcement of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), when combined with persistent social stigma, creates a cycle of marginalisation and

recidivism. This framework fails to support the long-term rehabilitation of drug-dependent individuals and instead reinforces their criminalisation, thereby undermining both public health objectives and principles of justice.

I. Research Methodology

This study adopts a doctrinal and analytical research methodology to examine the legal framework governing drug addiction in India. The doctrinal approach involves a systematic analysis of statutory provisions, particularly the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), along with relevant constitutional principles and judicial precedents. This enables a critical evaluation of how the law is structured and interpreted in practice.

In addition to doctrinal analysis, the study follows a descriptive and analytical approach to assess the gap between the “law in books” and the “law in action.” It evaluates how legal provisions relating to punishment and rehabilitation operate in reality, especially in the context of drug-dependent individuals. The research also incorporates a comparative dimension, drawing insights from selected international models that adopt health-oriented approaches to drug policy.

The methodology further engages with interdisciplinary perspectives, particularly from public health and victimology, to understand addiction beyond a purely legal framework. This allows for a more holistic analysis of the issue, considering both legal consequences and social realities.

Overall, the study relies on qualitative analysis of legal texts, judicial decisions, and secondary sources to critically examine whether the existing framework effectively balances control with care, or whether it continues to reinforce a punitive approach toward vulnerable individuals.

1. Sources of Data

This study is based on both primary and secondary sources of data, ensuring a comprehensive and balanced analysis of the legal framework governing drug addiction in India.

Primary sources form the foundation of this research and include statutory provisions, constitutional principles, and judicial decisions. The principal legislation examined is the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), along with relevant provisions of the Constitution of India, particularly those relating to the right to life and personal liberty. In addition, judgments of the Supreme Court and various High Courts have been analysed to understand judicial interpretation and application of the law in practice.

Secondary sources have been used to support and contextualise the primary data. These include leading law journals such as All India Reporter (AIR) and Supreme Court Cases (SCC), parliamentary committee reports, government policy documents, and international drug policy reports. Scholarly articles, books, and global studies on drug laws and public health approaches have also been referred to in order to provide a broader analytical perspective.

Together, these sources enable a critical examination of both the legal framework and its practical implications, particularly in relation to the treatment of drug-dependent individuals.

J. Limitations of the Study

While this study attempts to provide a comprehensive analysis of the legal framework governing drug addiction in India, certain limitations must be acknowledged.

Firstly, the study primarily adopts a doctrinal approach, focusing on the analysis of statutes, judicial decisions, and secondary sources. It does not include empirical or field-based research, such as interviews or surveys with affected individuals, law enforcement authorities, or medical professionals. As a result, the analysis of ground-level realities is based on existing reports and literature rather than first-hand data.

Secondly, the scope of the study is limited mainly to the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) and its application to drug-dependent individuals. It does not extensively examine the broader dimensions of drug trafficking networks, organised crime, or international narcotics control mechanisms.

Thirdly, the study relies on secondary data to assess issues such as rehabilitation infrastructure and social stigma. Due to the lack of access to prison records, medical data, and institutional reports, certain aspects of the practical impact of drug laws may not be fully captured.

Lastly, while the study includes a comparative perspective, it focuses only on selected international models. It does not provide an exhaustive analysis of all global drug policies, which may limit the scope of comparative conclusions.

Despite these limitations, the study seeks to provide a meaningful and critical understanding of how the current legal framework impacts drug-dependent individuals and highlights the need for a more balanced and humane approach.

K. Scheme of Presentation

This study is structured into seven chapters, each addressing a specific aspect of the research problem.

1. **Chapter 1:** Introduces the topic and sets out the research design, including the background, research problem, objectives, methodology, and scope of the study.
2. **Chapter 2:** Examines the theoretical framework of victimology, focusing on the concept of the “victim-offender overlap” and its relevance to drug-dependent individuals.
3. **Chapter 3:** Provides a doctrinal analysis of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), with particular emphasis on provisions relating to punishment, bail, and rehabilitation.
4. **Chapter 4:** Analyses judicial decisions of the Supreme Court and High Courts to understand how the law has been interpreted and applied in practice.
5. **Chapter 5:** Explores the gap between law and implementation, highlighting issues such as weak rehabilitation systems, enforcement practices, and social stigma.

6. **Chapter 6:** Undertakes a comparative analysis of international models, focusing on approaches that prioritise treatment and harm reduction over punishment.
7. **Chapter 7:** Concludes the study by summarising key findings and proposing reform-oriented recommendations aimed at developing a more humane and health-centric legal framework.

IV. THEORETICAL FRAMEWORK OF VICTIMOLOGY

Victimology developed to correct the imbalance in criminal law that focused mainly on offenders while ignoring victims. It highlights that crime is not just about punishment but also about understanding the suffering, vulnerability, and rights of those affected.²⁰ Today, victimology looks beyond immediate harm and examines deeper issues like poverty, inequality, and social exclusion that make certain individuals more vulnerable.²¹

A key idea in this field is that the roles of “victim” and “offender” often overlap. In many real-life situations, especially involving drug addiction, individuals may commit offences while also being victims of circumstances such as trauma, poverty, or psychological distress.

1. **Concept of Victim in Criminal Law:** The meaning of “victim” has expanded over time. It now includes anyone who suffers physical, emotional, economic, or social harm due to an act or omission.²² Modern law also recognises that victims deserve dignity, participation in justice processes, and access to rehabilitation. Importantly, a person may not always fit neatly into one category. In some cases, especially addiction-related situations, an individual may be both a victim and an offender at the same time.
2. **Victim–Offender Overlap:** The victim–offender overlap explains that many offenders have histories of victimisation. This idea, rooted in criminology, shows that crime is often linked to social and psychological factors rather than

²⁰ Benjamin Mendelsohn, “Victimology and Its Development” (1956).

²¹ Nils Christie, “Conflicts as Property” (1977) 17 *BJ Criminology* 1.

²² UN General Assembly, Declaration of Basic Principles of Justice for Victims of Crime (1985).

pure choice.²³ In the case of drug dependence, individuals are frequently driven by trauma, stress, or socio-economic hardship. Their actions, such as drug possession, are often responses to addiction rather than deliberate criminal intent.

3. **Drug Dependence and Victimhood:** Drug-dependent individuals often live in a dual reality. They are treated as offenders under the law, but their addiction is usually shaped by earlier harm, vulnerability, and lack of support. Under the Narcotic Drugs and Psychotropic Substances Act, 1985, this distinction is often ignored. The law tends to treat users and traffickers, similarly, leading to punishment instead of treatment.²⁴
4. **Addiction as Structural Victimization:** Addiction can be seen as a result of structural problems like poverty, unemployment, and lack of healthcare.²⁵ These conditions push individuals towards substance use as a coping mechanism. When such individuals are punished instead of treated, the system reinforces their marginalisation rather than addressing the root causes.
5. **Gap Between Law and Practice:** Although addiction is increasingly recognised as a health issue, in practice it is still treated as a crime. This creates a contradiction where the law acknowledges vulnerability but responds with punishment.²⁶ This gap leads to stigma, discourages treatment, and increases the chances of relapse.
6. **Stigma and Re-Victimisation:** Criminalisation labels individuals as offenders, making it harder for them to reintegrate into society. They face discrimination in jobs, housing, and social life. Fear of legal action also prevents them from seeking help, continuing the cycle of addiction and marginalisation.²⁷
7. **Comparative Perspective:** Some countries have adopted health-based approaches focusing on treatment and rehabilitation rather than punishment.

²³ Hans von Hentig, *The Criminal and His Victim* (1948).

²⁴ Narcotic Drugs and Psychotropic Substances Act, 1985 (India).

²⁵ Johan Galtung, "Violence, Peace and Peace Research" (1969).

²⁶ UNODC, *World Drug Report*.

²⁷ Erving Goffman, *Stigma* (1963).

These models have shown better outcomes in reducing drug dependency and improving social reintegration.²⁸

8. **Critical View:** The victim–offender overlap should not be applied blindly. Serious crimes like trafficking require strict punishment. However, for drug users, this theory supports a more humane and rehabilitative approach instead of a purely punitive one.
9. **Conclusion:** Victimology shows that drug-dependent individuals are often both victims and offenders. A purely punitive legal system fails to address this complexity. A balanced approach that combines accountability with treatment and rehabilitation is therefore necessary.

V. DOCTRINAL ANALYSIS OF THE NDPS ACT, 1985

The Narcotic Drugs and Psychotropic Substances Act, 1985 represents India's most stringent legislative framework for controlling narcotic substances and regulating activities connected to them. Enacted with the objective of curbing drug trafficking and protecting public health, the statute adopts a strongly deterrent approach, characterised by severe punishments, limited judicial discretion in sentencing, and restrictive bail conditions. Over time, it has become one of the most debated criminal legislations due to its strict structure and its far-reaching impact on both traffickers and drug-dependent individuals.

This chapter undertakes a doctrinal examination of the NDPS Act, 1985 by analysing its statutory provisions, enforcement mechanisms, and judicial interpretation. It focuses particularly on how the Act structures offences, prescribes punishment, regulates bail, and provides limited avenues for rehabilitation. The analysis also highlights the internal tension within the Act between its punitive framework and its limited recognition of addiction as a condition requiring treatment.

By engaging with the statutory text and relevant judicial developments, this chapter aims to assess whether the NDPS Act, in its current form and application, achieves a

²⁸ EMCDDA, Drug Policy Reports.

balanced approach between strict enforcement and the protection of individual rights, especially in cases involving drug-dependent persons.

A. Legislative Objectives and Policy Orientation

The Narcotic Drugs and Psychotropic Substances Act, 1985 was enacted as a comprehensive legal response to the growing menace of drug trafficking and substance abuse in India. The primary objective of the legislation is to consolidate and strengthen laws relating to narcotic drugs, with a clear emphasis on eliminating illicit trafficking and safeguarding public health.²⁹ Unlike earlier regulatory frameworks, the NDPS Act marks a decisive shift towards a prohibition-based model, where stringent penal consequences are used as the primary tool of deterrence rather than regulatory control.

This shift reflects a broader policy orientation that prioritises deterrence over treatment, even though drug consumption is increasingly recognised as a public health concern. The Act thus operates at the intersection of criminal law and public health policy but leans heavily towards punitive enforcement.³⁰ From a constitutional perspective, it raises important questions regarding the balance between Article 21 protections and the State's obligation to regulate harmful substances. While the objective is legitimate, its implementation often reflects a tension between public welfare and individual liberty.

B. Classification of Offences under the NDPS Act

The NDPS Act creates a structured classification of offences based on the nature and quantity of the substance involved. It criminalises activities such as possession, consumption, cultivation, trafficking, and financing of illicit drug operations.³¹ A central feature of the Act is the distinction between "small quantity" and "commercial quantity," which directly determines the severity of punishment.

This quantity-based framework is intended to differentiate users from traffickers; however, in practice, it often produces disproportionate consequences. Individuals

²⁹ Narcotic Drugs and Psychotropic Substances Act, 1985 (India), Preamble.

³⁰ *Rajesh Kumar v. State of Punjab*, (2018) 9 SCC 222.

³¹ NDPS Act, 1985, Sections 7-14.

caught with quantities marginally above the threshold may face severe penal outcomes, regardless of intent or context. The legal consequence of such classification is that culpability becomes heavily objectified, reducing judicial discretion in evaluating the individual circumstances of the accused.

C. Punishment Structure and Sentencing Policy

The sentencing framework under the NDPS Act is predominantly rigid and deterrent oriented. Sections 15 to 31 prescribe a graded punishment structure depending on the type and quantity of the substance involved.³² The Act also incorporates mandatory minimum sentences, which significantly limit judicial discretion in sentencing.

While such rigidity is intended to ensure uniform enforcement and deterrence, it raises concerns under the principle of proportionality, which is a core component of modern criminal jurisprudence. The absence of adequate sentencing flexibility may result in punishment that does not always reflect individual culpability or rehabilitative potential. Consequently, the framework has been criticised for prioritising deterrence over corrective justice.

D. Bail Provisions and Judicial Restrictions

One of the most stringent aspects of the NDPS Act is Section 37, which imposes severe restrictions on the grant of bail for certain categories of offences.³³ The provision requires the court to be satisfied that there are “reasonable grounds” for believing that the accused is not guilty and is unlikely to commit an offence while on bail.

This reverse threshold significantly alters the conventional presumption of innocence in criminal law. Courts have repeatedly interpreted Section 37 strictly, making bail difficult even at preliminary stages. The result is prolonged undertrial detention in many cases, particularly where investigations are delayed. This creates a tension between the State’s interest in preventing drug offences and the individual’s right to personal liberty under Article 21.

³² NDPS Act, 1985, Sections 15–31.

³³ NDPS Act, 1985, Section 37; *Union of India v. Ram Samujh*, (1999) 9 SCC 429.

E. Procedural Safeguards and Enforcement Powers

The NDPS Act grants extensive powers to enforcement authorities relating to search, seizure, and arrest. Sections 42, 43, and 50 lay down procedural safeguards intended to prevent abuse of power and ensure fairness in investigation.³⁴ However, compliance with these provisions has often been a subject of judicial scrutiny.

Courts have emphasised that failure to adhere strictly to procedural requirements can vitiate the prosecution case. Despite this, evidentiary lapses and procedural irregularities remain common in enforcement practice. The Act also creates a distinction between empowered officers and general police officers, which further complicates enforcement consistency.

F. Presumption of Guilt and Reverse Burden of Proof

A distinctive feature of the NDPS Act is the statutory presumption of guilt under Sections 35 and 54, which shifts the burden of proof onto the accused.³⁵ This represents a departure from the traditional criminal law principle of presumption of innocence.

While intended to strengthen enforcement against organised drug crime, this reverse burden raises serious constitutional concerns, particularly under Article 21. Courts have attempted to balance this by requiring prosecution to first establish foundational facts before the burden shifts. Nevertheless, the provision remains one of the most debated aspects of the Act.

G. Rehabilitation and De-addiction Framework under the NDPS Act

Although primarily punitive, the NDPS Act contains limited rehabilitative provisions, most notably Section 64A, which provides immunity from prosecution for addicts undergoing voluntary treatment. However, the scope of this provision is narrow and its implementation remains inconsistent.

In contrast, the Mental Healthcare Act, 2017 recognises substance use disorders within its statutory definition of “mental illness” under Section 2(s), thereby formally acknowledging addiction as a health condition requiring care, treatment, and

³⁴ NDPS Act, 1985, Sections 42, 43, 50; *State of Punjab v. Baldev Singh*, (1999) 6 SCC 172.

³⁵ NDPS Act, 1985, Sections 35, 54; *Noor Aga v. State of Punjab*, (2008) 16 SCC 417.

rehabilitation. This creates an important legislative parallel in which addiction is treated as a matter of public health rather than criminal liability.

However, this recognition operates largely in isolation from the NDPS framework. There is minimal institutional coordination between mental health services and narcotics enforcement, resulting in a fragmented legal response. Individuals identified as drug-dependent under the NDPS regime are rarely diverted into mental healthcare systems, despite the statutory basis for such treatment existing under the 2017 Act.

Government-recognised de-addiction centres are intended to facilitate treatment-based intervention, but infrastructural and administrative limitations often weaken their effectiveness. Conditional immunity is available only in restricted circumstances, which limits the Act's ability to function as a truly rehabilitative framework. As a result, a significant gap persists between legislative intent and practical implementation, further highlighting the internal inconsistency within India's legal approach to addiction.

H. Judicial Interpretation and Evolving Case Law

Judicial interpretation of the NDPS Act has played a critical role in shaping its application. The Supreme Court has generally adopted a strict approach in matters of bail and procedural compliance, particularly in serious offences involving commercial quantities.³⁶ At the same time, courts have also emphasised the importance of safeguarding procedural fairness and individual rights.

Over time, jurisprudence reflects an attempt to balance human rights considerations with the objectives of narcotics control. However, the dominant trend remains enforcement-heavy, with limited judicial intervention in the legislative structure itself.

I. Critical Evaluation of the NDPS Framework

A doctrinal analysis of the NDPS Act reveals a strong punitive orientation that often results in over-criminalisation, particularly of drug users rather than large-scale

³⁶ Union of India v. Shiv Shanker Kesari, (2007) 7 SCC 798.

traffickers. The strict sentencing structure and restrictive bail provisions contribute to disproportionate punishment in certain cases.

Moreover, the Act demonstrates systemic limitations in addressing addiction as a health issue, with insufficient emphasis on rehabilitation and reintegration. This creates a cycle of incarceration and relapse, particularly among vulnerable populations. From a reform perspective, there is a growing need to shift towards a harm-reduction model that balances enforcement with treatment-oriented justice.

VI. JUDICIAL LANDSCAPE: A CASE LAW ANALYSIS UNDER THE NDPS ACT, 1985

The judicial interpretation of the Narcotic Drugs and Psychotropic Substances Act, 1985 reflects an ongoing constitutional tension between the imperatives of strict drug control and the protection of individual liberties. While the legislative framework is overtly deterrent, the judiciary has functioned as a balancing institution, attempting to reconcile procedural rigidity with constitutional guarantees under Articles 14, 19, and 21.³⁷ Over time, courts have not merely interpreted the statute but have effectively shaped its operational character through a body of evolving jurisprudence that oscillates between strict enforcement and rights-based safeguards.

A. Overview of Judicial Approach under the NDPS Act

The judicial interpretation of the Narcotic Drugs and Psychotropic Substances Act, 1985 reflects an ongoing constitutional tension between the imperatives of strict drug control and the protection of individual liberties. While the legislative framework is overtly deterrent, the judiciary has functioned as a balancing institution, attempting to reconcile procedural rigidity with constitutional guarantees under Articles 14, 19, and 21. Over time, courts have not merely interpreted the statute but have effectively shaped its operational character through a body of evolving jurisprudence that oscillates between strict enforcement and rights-based safeguards.

³⁷ Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

B. Procedural Compliance: The Foundation of Fair Enforcement

One of the earliest and most consistent judicial interventions under the NDPS Act concerns strict compliance with procedural safeguards, particularly those relating to search, seizure, and arrest. In *State of Punjab v. Baldev Singh*, the Supreme Court held that compliance with Section 50, which provides the right of the accused to be searched before a Gazetted Officer or Magistrate, is mandatory in nature.³⁸ The Court emphasised that such safeguards are not mere formalities but essential protections against arbitrary state action.

Similarly, in *Karnail Singh v. State of Haryana*, the Court clarified that while substantial compliance with Section 42 may be acceptable in urgent situations, complete disregard of procedural requirements can vitiate the prosecution case.³⁹ These decisions collectively demonstrate that procedural safeguards under the NDPS Act are not decorative provisions, but constitutional necessities embedded within the criminal justice framework.

C. Presumption of Guilt and Constitutional Balancing

The NDPS Act introduces a significant departure from conventional criminal jurisprudence through statutory presumptions under Sections 35 and 54, which shift the burden of proof onto the accused. In *Noor Aga v. State of Punjab*, the Supreme Court critically examined this reverse burden and held that although constitutional, it must be applied only after the prosecution establishes foundational facts beyond reasonable doubt.⁴⁰ The Court reaffirmed that presumption of innocence remains a human rights principle that cannot be lightly displaced.

This decision reflects a deeper constitutional balancing exercise: while the State's interest in controlling drug trafficking is recognised as compelling, it cannot override the fundamental fairness required in criminal adjudication. The judiciary thus imposes an evidentiary threshold to prevent mechanical application of reverse burden provisions.

³⁸ *State of Punjab v. Baldev Singh*, (1999) 6 SCC 172.

³⁹ *Karnail Singh v. State of Haryana*, (2009) 8 SCC 539.

⁴⁰ *Noor Aga v. State of Punjab*, (2008) 16 SCC 417.

D. Bail Jurisprudence under Section 37: Liberty in Constraint

Section 37 of the NDPS Act has generated some of the most restrictive bail jurisprudence in Indian criminal law. In *Union of India v. Ram Samujh*, the Supreme Court held that liberal bail in NDPS cases would defeat the purpose of the Act, emphasising that drug offences have serious societal implications.⁴¹ The Court adopted a strict interpretive approach, significantly narrowing judicial discretion.

However, in subsequent decisions such as *Tofan Singh v. State of Tamil Nadu*, the Court adopted a more rights-sensitive interpretation in relation to evidentiary standards, indirectly influencing bail considerations by strengthening procedural safeguards.⁴² Despite this evolution, Section 37 continues to operate as a statutory barrier, often resulting in prolonged pre-trial incarceration, particularly for accused individuals involved in intermediate or borderline quantities.

This jurisprudence reveals a structural paradox: while courts acknowledge the harshness of Section 37, they remain bound by its legislative rigidity, thereby limiting the transformative potential of judicial review.

E. Distinction Between User and Trafficker: Judicial Sensitivity

Similarly, courts have, in several instances, shown leniency towards addicts by recognising their condition as a mitigating factor, particularly where possession is for personal consumption. This reflects an emerging judicial sensitivity towards the victim-offender overlap, even though the statutory framework does not explicitly adopt such categorisation. A notable development in NDPS jurisprudence is the evolving judicial approach to distinguishing between drug users and commercial traffickers. In *E. Micheal Raj v. Narcotic Control Bureau*, the Supreme Court had earlier held that sentencing should be based on the actual content of the narcotic substance rather than the total mixture weight. However, this position was subsequently overruled by a three-judge bench in *Hira Singh v. Union of India*, which clarified that

⁴¹ *Union of India v. Ram Samujh*, (1999) 9 SCC 429.

⁴² *Tofan Singh v. State of Tamil Nadu*, (2021) 4 SCC 1.

the total weight of the mixture, including neutral substances, must be considered for determining small or commercial quantity under the NDPS Act.

This doctrinal shift has significant implications, as it narrows the scope for proportionate sentencing and reduces judicial flexibility in distinguishing between users and traffickers. The issue remains legally contested, with subsequent challenges such as *Mayank Girishbhai Shah v. Union of India* reflecting continuing uncertainty in this area.

Despite these constraints, courts have, in certain cases, shown limited leniency towards addicts by recognising dependency as a mitigating factor, particularly where possession is linked to personal consumption. This indicates a constrained but emerging judicial sensitivity towards the victim-offender overlap within the boundaries of the statutory framework.

Similarly, courts have, in several instances, shown leniency towards addicts by recognising their condition as a mitigating factor, particularly where possession is for personal consumption. This reflects an emerging judicial sensitivity towards the victim-offender overlap, even though the statutory framework does not explicitly adopt such categorisation.

F. Evidentiary Standards and Reliability of Investigation

The judiciary has repeatedly scrutinised the quality of investigation under the NDPS Act, particularly due to its severe penal consequences. In *State of Punjab v. Balbir Singh*, the Court held that failure to comply with mandatory procedural requirements raises serious doubts regarding the prosecution case.⁴³ The emphasis on strict evidentiary standards reflects judicial awareness that wrongful conviction in NDPS cases carries disproportionately high consequences.

More recently, courts have also emphasised the need for independent corroboration and credible chain of custody in narcotics seizures. This jurisprudence indicates an attempt to counterbalance the Act's reverse burden structure with heightened prosecutorial accountability.

⁴³ *State of Punjab v. Balbir Singh*, (1994) 3 SCC 299.

G. Emerging Rights-Based Interpretation and Reformatory Trends

In recent years, NDPS jurisprudence has gradually incorporated rights-based reasoning, particularly in relation to bail, procedural fairness, and evidentiary thresholds. Courts have increasingly acknowledged that drug-related offences cannot be viewed solely through the lens of criminality, especially where addiction and dependency are involved.

However, this evolution remains incremental rather than transformative. The judiciary continues to operate within the statutory constraints of the Act, which limits its ability to fully reorient the framework towards rehabilitation and harm reduction. Nonetheless, the jurisprudential trajectory suggests a slow but visible shift towards constitutionalising drug law enforcement.

H. Conclusion: Judicial Dualism under the NDPS Framework

The judicial approach to the NDPS Act reflects a dual commitment: strict enforcement of drug control laws on one hand, and protection of constitutional liberties on the other. This dualism has produced a complex jurisprudence characterised by both rigidity and restraint.

While courts have introduced important safeguards particularly in procedural compliance, evidentiary standards, and selective liberalisation of bail principles the overarching structure of the NDPS Act continues to limit full doctrinal transformation. As a result, judicial interpretation functions more as a moderating force rather than a reformatory one.

VII. IMPLEMENTATION GAPS AND SOCIAL REALITY

It examines how drug laws operate in practice, revealing the gap between what the law promises and what individuals actually experience on the ground, especially in relation to addiction, treatment, and social reintegration.

A. Law-Practice Divide under the NDPS Act

A fundamental issue in the implementation of the Narcotic Drugs and Psychotropic Substances Act, 1985 lies in the growing divergence between legislative intent and ground-level enforcement. While the statute, in its broader design, aims at controlling

illicit drug trafficking and implicitly allows space for rehabilitation in limited circumstances, its practical application is overwhelmingly shaped by punitive logic.⁴⁴ This creates a situation where the rehabilitative potential of the law remains largely underdeveloped in practice.

In enforcement settings, punitive responses tend to dominate over therapeutic interventions. The focus remains on arrest, seizure, and prosecution, rather than diversion into treatment pathways.⁴⁵ This structural imbalance reflects an institutional bias where drug use is frequently treated as a criminal deviation rather than a health-related condition, thereby weakening the corrective and reformative objectives of criminal justice policy.

B. Weak Rehabilitation Infrastructure

One of the most visible implementation failures lies in the inadequacy of rehabilitation infrastructure. Despite the increasing recognition of addiction as a medical disorder, de-addiction centres remain insufficient in number, unevenly distributed, and often lack adequate medical and psychological expertise.⁴⁶ This results in limited accessibility for individuals who require sustained treatment and recovery support.

Additionally, there is a persistent disconnect between the criminal justice system and healthcare institutions. Courts and enforcement agencies rarely function in coordination with treatment centres, leading to missed opportunities for diversion and rehabilitation.⁴⁷ This gap is further intensified by stark urban-rural disparities, where rural populations face significantly lower access to structured rehabilitation services, thereby deepening inequality in recovery outcomes.

C. Enforcement Practices and Policing Priorities

Enforcement practices under the NDPS regime are often driven by measurable policing outcomes such as arrests, seizures, and conviction rates.⁴⁸ While these

⁴⁴ Narcotic Drugs and Psychotropic Substances Act, 1985 (India), Preamble.

⁴⁵ United Nations Office on Drugs and Crime (UNODC), *World Drug Report* (latest edition).

⁴⁶ World Health Organization (WHO), *International Standards for the Treatment of Drug Use Disorders* (latest ed.).

⁴⁷ National Institute on Drug Abuse (NIDA), *Principles of Drug Addiction Treatment* (latest ed.).

⁴⁸ David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Oxford University Press, 2001).

indicators may reflect enforcement intensity, they do not necessarily reflect effectiveness in addressing addiction or reducing demand.

A critical consequence of this approach is the blurring of distinction between drug users and organised traffickers. Individuals with dependency issues are frequently processed through the same punitive mechanisms as large-scale offenders, leading to over-criminalisation of vulnerable populations.⁴⁹ Procedural diversion into treatment remains underutilised, despite its potential to reduce recidivism and support rehabilitation.

D. Judicial and Administrative Implementation Gaps

Although the NDPS Act contains certain rehabilitative provisions, their practical utilisation remains limited. Provisions that could support treatment-oriented approaches are often under-invoked, resulting in a predominantly custodial response to drug-related offences.⁵⁰ This is compounded by systemic delays in adjudication, which lead to prolonged undertrial detention and further social marginalisation.

Moreover, discretionary relief mechanisms available within the judicial system are inconsistently applied. Administrative inefficiencies, coupled with overloaded courts, contribute to a situation where procedural delay becomes a structural feature rather than an exception.⁵¹

E. Social Stigma and Secondary Victimization

Beyond legal and institutional structures, social stigma plays a decisive role in shaping the lived experience of drug-dependent individuals. Addiction is often perceived as a moral failing rather than a medical condition, resulting in deep social exclusion.⁵² This perception significantly affects family relationships, community acceptance, and access to support systems.

Stigma also extends into the economic sphere, where individuals with a history of drug dependence face substantial barriers in securing employment and rebuilding

⁴⁹ S. Belenko, *Drug Abuse and Criminal Behaviour* (NIJ Research Report, 2000).

⁵⁰ Narcotic Drugs and Psychotropic Substances Act, 1985, Section 64A.

⁵¹ *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81.

⁵² Erving Goffman, *Stigma: Notes on the Management of Spoiled Identity* (1963).

stable lives.⁵³ This form of secondary victimisation persists even after legal processes are concluded, thereby reinforcing long-term marginalisation.

F. Cyclical Nature of Addiction and Criminalisation

The interaction between addiction and criminalisation often produces a self-reinforcing cycle. Relapse is frequently linked to the absence of sustained rehabilitation support, social reintegration mechanisms, and psychological care.⁵⁴ Once an individual enters the criminal justice system, the existence of a criminal record further restricts opportunities for employment and reintegration.

This exclusion increases vulnerability to re-engagement with substance use and related offences, thereby perpetuating repeated encounters with law enforcement. The absence of effective reintegration frameworks ensures that the cycle of addiction and criminalisation continues largely uninterrupted.⁵⁵

G. Structural Causes Behind Implementation Failure

The failure of effective implementation cannot be attributed solely to enforcement agencies; it is deeply rooted in structural policy choices. The prevailing legal framework prioritises deterrence over health-oriented interventions, thereby shaping institutional behaviour at all levels.⁵⁶

This is further complicated by limited coordination between health departments and law enforcement agencies, resulting in fragmented responses to drug dependence. Resource constraints in public healthcare systems and the absence of an integrated national drug policy further weaken the system's capacity to address addiction comprehensively.⁵⁷

H. Overall Impact on Drug-Dependent Individuals

The cumulative effect of these structural and institutional deficiencies is the transformation of drug-dependent individuals from patients into offenders. Instead

⁵³ WHO, *Social Determinants of Health and Substance Use* (latest report).

⁵⁴ NIDA, *Principles of Drug Addiction Treatment* (latest ed.).

⁵⁵ UNODC, *World Drug Report* (latest edition).

⁵⁶ Garland, *The Culture of Control* (2001).

⁵⁷ WHO, *Global Health and Substance Use Policy Reports* (latest).

of being primarily treated as individuals requiring medical care, they are frequently processed through punitive systems that intensify vulnerability.

This leads to weak rehabilitation outcomes, repeated relapse, and sustained social exclusion. Most importantly, it reinforces the victim-offender overlap, where individuals remain simultaneously situated as victims of structural harm and subjects of criminal liability.⁵⁸ The persistence of this duality reflects a deeper systemic failure to address addiction in a holistic and humane manner.

VIII. COMPARATIVE INTERNATIONAL MODELS: A GLOBAL POLICY ANALYSIS OF DRUG USE, TREATMENT, AND CRIMINAL JUSTICE RESPONSES

A. Global Shift from Punitive to Public Health Paradigms

Globally, drug policy is increasingly shifting from punitive criminalisation to public health-oriented governance. Drug dependence is now widely recognised as a chronic, relapsing medical condition requiring sustained therapeutic intervention rather than penal sanction.⁵⁹ International bodies such as the World Health Organization (WHO) and the United Nations Office on Drugs and Crime (UNODC) have consistently promoted harm reduction strategies, encouraging states to prioritise treatment and social reintegration over incarceration.⁶⁰ This evolution reflects an emerging global policy consensus that health-based interventions are more effective in addressing drug-related harms than purely punitive frameworks.⁶¹

B. Portugal: Decriminalisation and Administrative Diversion Model

Portugal's drug policy reform under Law No. 30/2000 decriminalised possession of drugs for personal consumption, shifting the response from criminal courts to administrative "Dissuasion Commissions."⁶² These commissions evaluate users and

⁵⁸ Hans von Hentig, *The Criminal and His Victim* (1948).

⁵⁹ World Health Organization, *Substance Use and Health: Global Policy Framework* (2020).

⁶⁰ U.N. Office on Drugs & Crime, *World Drug Report 2023* (2023).

⁶¹ See *id.*; World Health Organization, *supra* note 1.

⁶² Lei No. 30/2000 (Port.) (Decriminalisation of Drug Use).

may refer them to treatment, education, or counselling instead of imposing penal sanctions.

Empirical evidence suggests significant reductions in overdose deaths, HIV infection rates, and drug-related incarceration following reform.⁶³ Importantly, Portugal did not legalise drug use; rather, it replaced criminal penalties with administrative oversight, maintaining regulatory control while prioritising health intervention.⁶⁴ This model demonstrates that decriminalisation can coexist with strong state regulation without undermining public order objectives.⁶⁵

C. Switzerland: Harm Reduction and Medicalised Addiction Policy

Switzerland has adopted one of the most advanced harm reduction frameworks globally. Since the 1990s, it has implemented heroin-assisted treatment (HAT) programmes for individuals with severe opioid dependence who have not responded to conventional treatment.⁶⁶ The system is complemented by supervised injection facilities and needle exchange programmes integrated into public health infrastructure.

Studies show that these measures have significantly reduced drug-related crime, mortality, and infectious disease transmission.⁶⁷ The Swiss model is characterised by a pragmatic policy philosophy prioritising “stability and survival” over abstinence, recognising addiction as a chronic health condition requiring long-term management rather than immediate eradication.⁶⁸

D. United Kingdom: Treatment-Integrated Criminal Justice Approach

The United Kingdom employs a hybrid model incorporating treatment within sentencing structures through Drug Rehabilitation Requirements (DRRs).⁶⁹ Courts can mandate treatment compliance under judicial supervision as part of community

⁶³ Caitlin Hughes & Alex Stevens, What Can We Learn from the Portuguese Decriminalization of Illicit Drugs? 50 *Brit. J. Criminology* 999 (2010).

⁶⁴ Transform Drug Policy Found., *Drug Decriminalisation in Portugal: Evidence Review* (2018).

⁶⁵ *Id.*

⁶⁶ Ambros Uchtenhagen, Heroin-Assisted Treatment in Switzerland, 103 *The Lancet* 303 (2009).

⁶⁷ Swiss Fed. Off. of Pub. Health, *Harm Reduction Policy Report* (2021).

⁶⁸ Eur. Monitoring Ctr. for Drugs & Drug Addiction, *Harm Reduction Overview in Europe* (2022).

⁶⁹ UK Ministry of Justice, *Drug Rehabilitation Requirements Guidance* (2019).

or custodial sentencing. Drug courts further integrate therapeutic supervision with legal accountability.

However, implementation remains uneven due to austerity-driven funding constraints and regional disparities in service delivery.⁷⁰ The UK experience reflects structural tension between rehabilitation-oriented justice reforms and traditional enforcement frameworks.⁷¹

E. United States: Fragmented Federalism and the War on Drugs Legacy

The United States' drug policy is heavily shaped by the legacy of the "War on Drugs," which led to mass incarceration, disproportionately affecting marginalised communities.⁷² Despite this punitive legacy, several states have introduced reforms including cannabis legalisation, diversion courts, and expanded access to medication-assisted treatment (MAT).⁷³

However, federal-state fragmentation results in inconsistent enforcement and treatment accessibility.⁷⁴ This structural incoherence limits the effectiveness of reform efforts and perpetuates unequal outcomes across jurisdictions.⁷⁵

F. Canada: Public Health Integration and Safe Supply Debate

Canada has adopted a public health-oriented drug policy framework, including supervised consumption sites and opioid substitution therapy programmes.⁷⁶ The opioid overdose crisis has been formally declared a national public health emergency, prompting expanded harm reduction responses.⁷⁷

A significant emerging policy debate concerns "safe supply" initiatives, which aim to provide regulated pharmaceutical alternatives to toxic illicit drugs.⁷⁸ While evidence

⁷⁰ Advisory Council on the Misuse of Drugs, Treatment and Recovery Report (2021).

⁷¹ Id.

⁷² Michael Tonry, *Punishing Race: A Continuing American Dilemma* (Oxford Univ. Press 2011).

⁷³ Substance Abuse & Mental Health Servs. Admin., Medication-Assisted Treatment Report (2022).

⁷⁴ David Courtwright, *The Age of Addiction* (Harvard Univ. Press 2019).

⁷⁵ Id.

⁷⁶ Gov't of Canada, Opioid Response Strategy (2022).

⁷⁷ Id.

⁷⁸ Can. Pub. Health Ass'n, Safe Supply Policy Brief (2021).

supports harm reduction benefits, the policy remains politically contested, reflecting broader ideological tensions between public health and prohibitionist approaches.⁷⁹

G. Australia: Diversionary Policing and Early Intervention Models

Australia employs police-led diversion programmes that redirect individuals found in possession of small quantities of drugs into treatment or counselling rather than the criminal justice system.⁸⁰ These programmes are particularly focused on early intervention among young users to prevent escalation into dependency and criminalisation.

While generally effective in reducing system contact, outcomes vary due to inconsistent implementation across states and territories.⁸¹ This highlights the importance of institutional capacity in determining the success of diversion-based models.

H. International Human Rights and UN Drug Control Framework

International drug control is governed by the Single Convention on Narcotic Drugs, 1961, and related treaties.⁸² However, interpretation of these instruments has evolved significantly, with increasing emphasis on proportionality, public health, and human rights compliance.⁸³

United Nations agencies have encouraged states to adopt alternatives to incarceration for drug users, aligning drug policy with international human rights obligations.⁸⁴ This reflects the development of a “balanced approach” combining enforcement with health-based interventions.⁸⁵

I. Comparative Policy Synthesis and Lessons for Reform

Comparative evidence strongly indicates that decriminalisation combined with treatment integration produces better public health and social outcomes than punitive

⁷⁹ Id.

⁸⁰ Victoria Police, *Early Intervention Drug Diversion Outcomes Report* (2021).

⁸¹ Id.

⁸² Single Convention on Narcotic Drugs, Mar. 30, 1961, 520 U.N.T.S. 151.

⁸³ U.N. Hum. Rts. Council, *Drug Policy and Human Rights Report* (2020).

⁸⁴ Id.

⁸⁵ U.N. Off. on Drugs & Crime, *Balanced Approach to Drug Policy* (2022).

models. Harm reduction strategies consistently reduce mortality, disease transmission, and criminal justice burden.⁸⁶

Criminalisation of drug users tends to reinforce marginalisation and relapse cycles, undermining rehabilitation outcomes. Effective systems integrate enforcement with healthcare rather than treating them as mutually exclusive domains. The central global lesson is that addiction policy is most effective when grounded in public health rationality rather than penal deterrence logic.⁸⁷

IX. CONCLUSION AND RECOMMENDATIONS

A. Conclusion

The comparative analysis undertaken in this study demonstrates a clear and consistent global trend: drug policy is gradually moving away from purely punitive frameworks toward models that integrate public health, harm reduction, and social reintegration. Jurisdictions such as Portugal and Switzerland illustrate that when drug dependence is treated as a health condition rather than a criminal identity, outcomes improve significantly in terms of reduced mortality, lower incarceration rates, and better long-term rehabilitation.

In contrast, jurisdictions that continue to rely heavily on criminalisation, particularly of drug users rather than large-scale traffickers, tend to experience persistent cycles of incarceration, relapse, and social exclusion. The United States experience reflects how punitive legacy systems can structurally entrench inequality, while even reform-oriented systems such as the United Kingdom continue to struggle with inconsistent implementation due to resource constraints.

A central finding of this research is that the effectiveness of drug policy does not depend solely on legal severity, but on institutional design, access to healthcare, and the presence of coordinated rehabilitation systems. Where treatment infrastructure is weak, even well-drafted legal provisions fail to achieve meaningful impact.

⁸⁶ Eur. Monitoring Ctr. for Drugs & Drug Addiction, *European Drug Report 2023* (2023).

⁸⁷ Joanne Csete et al., *Public Health and International Drug Policy*, *The Lancet* (2016).

Conversely, where health systems are integrated with justice mechanisms, criminal law becomes a secondary tool rather than the primary response.

Ultimately, the study establishes that addiction cannot be effectively addressed through punishment alone. It is a multidimensional issue rooted in psychological, social, and economic vulnerabilities, requiring a coordinated response that moves beyond the traditional boundaries of criminal law.

B. Recommendations

- 1. Shift from Punitive to Health-Centric Framework:** Drug policy should formally recognise addiction as a public health issue. Legal frameworks must prioritise treatment, counselling, and rehabilitation over incarceration, particularly for users and individuals with minor possession offences.
- 2. Expansion of Diversion Mechanisms:** Diversion mechanisms at the pre-trial and post-arrest stages should be strengthened to ensure that individuals with substance dependence are directed toward treatment systems instead of criminal prosecution. Police and judicial authorities must be trained to identify addiction-related cases early.
- 3. Strengthening Rehabilitation Infrastructure:** A major structural reform is required in rehabilitation capacity. This includes increasing the number of de-addiction centres, improving rural access, and ensuring availability of trained psychiatrists, psychologists, and addiction specialists within public health systems.
- 4. Integrated Health-Justice Coordination:** There must be institutional coordination between law enforcement agencies, healthcare providers, and social welfare departments. Drug treatment cannot function in isolation; it requires a unified referral and monitoring system linking all relevant institutions.
- 5. Reducing Stigma and Social Exclusion:** Legal reform must be accompanied by social awareness initiatives aimed at reducing stigma associated with drug dependence. Stigmatisation discourages treatment-seeking behaviour and contributes to relapse and marginalisation.

6. **Judicial Sensitisation and Use of Discretionary Powers:** Judicial officers should be encouraged to use rehabilitative sentencing options wherever legally permissible. Courts must adopt a more therapeutic approach in appropriate cases, especially involving first-time users and vulnerable individuals.
7. **Data-Driven Policy Making:** Drug policy should be guided by empirical evidence rather than moral or political assumptions. Regular data collection on addiction patterns, treatment outcomes, and recidivism rates is essential for informed legislative and administrative reforms.
8. **Balanced Enforcement Strategy:** While shifting toward rehabilitation, enforcement against large-scale trafficking networks must remain strict and effective. The objective is not decriminalisation of all conduct, but proportionality ensuring that enforcement targets supply chains rather than individual vulnerability.

C. Final Observation

The future of drug policy lies in balance: a calibrated system that combines enforcement, health intervention, and social support. Any legal framework that ignores the human dimension of addiction risks becoming structurally ineffective. A sustainable response must therefore move beyond punishment and embrace a model grounded in dignity, recovery, and reintegration.

X. BIBLIOGRAPHY

A. PRIMARY SOURCES

1. Statutes and Treaties

- The Constitution of India, 1950.
- The Narcotic Drugs and Psychotropic Substances Act, 1985.
- UN Single Convention on Narcotic Drugs, 1961.
- Portugal Law No. 30/2000 (Decriminalization Framework).

2. Judicial Decisions

- E. Micheal Raj v. Narcotic Control Bureau, (2008) 5 SCC 161.
- *Karnail Singh v. State of Haryana*, (2009) 8 SCC 539.

- *Noor Aga v. State of Punjab*, (2008) 16 SCC 417.
- *State of Punjab v. Baldev Singh*, (1999) 6 SCC 172.
- *State of Punjab v. Balbir Singh*, (1994) 3 SCC 299.
- *Tofan Singh v. State of Tamil Nadu*, (2021) 4 SCC 1.
- *Union of India v. Ram Samujh*, (1999) 9 SCC 429.

B. SECONDARY SOURCES

1. Reports and Documents

- Law Commission of India Reports on Drug Abuse and Reform.
- United Nations Office on Drugs and Crime (UNODC), *World Drug Reports*.
- World Health Organization (WHO), *Public Health Dimension of the World Drug Problem*.
- Parliamentary Committee Reports on the Implementation of the NDPS Act.

2. Books and Journals

- **Journals:** All India Reporter (AIR); Supreme Court Cases (SCC).
- **Victimology:** R.K. Sinha, *Victim-Offender Overlap: A Criminological Analysis*, (2003) Journal of the Indian Law Institute.
- **Comparative Law:** Caitlin Elizabeth Hughes & Alex Stevens, *What Can We Learn from the Portuguese Decriminalization of Illicit Drugs?* 50 *British Journal of Criminology* 999 (2010).
- **Public Health:** World Health Organization, *Public Health Dimension of the World Drug Problem* (WHO Report); United Nations Office on Drugs and Crime, *World Drug Report* (UNODC).

C. WEB RESOURCES

1. LawFoyer International Journal of Doctrinal Legal Research (LIJDLR) Indexing Database: <https://lijdlr.com/indexing/>.
2. Narcotic Control Bureau (NCB) Annual Reports: <https://narcoticsindia.nic.in>.