

AN APPRAISAL OF DRUG TRAFFICKING LAW AND PUNISHMENT UNDER THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

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ABSTRACT

Drug trafficking ranks among the gravest threats confronting contemporary societies, cutting across public health, social cohesion, and national security in ways that no single legislative instrument can fully address. In the Indian context, the enactment of the *Narcotic Drugs and Psychotropic Substances Act*, 1985 (hereinafter "the NDPS Act" or "the Act") marked a decisive shift in state policy toward illicit narcotics consolidating a fragmented pre-existing legal architecture, honouring India's obligations under foundational United Nations conventions,¹ and erecting a comprehensive statutory mechanism for regulating every phase of the drug supply chain from cultivation through to financing.

The Act's penal philosophy rests on deterrence: offences are graded by the quantity of the substance involved, and commercial-quantity offences attract mandatory minimum sentences of rigorous imprisonment ranging from ten to twenty years alongside substantial fines.² Reinforcing this framework are provisions for reverse burden of proof, restrictive bail conditions under Section 37, and enhanced penalties for repeat offenders each reflecting a legislative determination to suppress narcotics-related criminality through the instrument of severe, predictable punishment.

Keywords: Drug Trafficking, NDPS Act 1985, Mandatory Minimum Sentences, Proportionality, Judicial Interpretation, Reverse Burden of Proof, Drug Policy Reform, India

¹Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985), Preamble [hereinafter NDPS Act]; Single Convention on Narcotic Drugs, Mar. 30, 1961, 520 U.N.T.S. 151; Convention on Psychotropic Substances, Feb. 21, 1971, 1019 U.N.T.S. 175.

²NDPS Act §§ 15–25 (prescribing rigorous imprisonment of not less than ten years and a fine of not less than one lakh rupees for commercial-quantity offences).

Yet the Act has not been free from criticism. Judicial scrutiny has repeatedly revealed the potential for its rigorous provisions to operate unjustly in individual cases, particularly where procedural safeguards during investigation are not observed.³ This article examines the legal architecture governing drug trafficking under the NDPS Act, evaluates the proportionality and practical deterrent value of its punishments, and situates its judicial interpretation within the broader framework of constitutional rights. It concludes with evidence-based recommendations for legislative reform drawing on comparative experience from Portugal, the United Kingdom, and the United States.

I. INTRODUCTION

Few areas of criminal law illuminate the tension between the state's legitimate interest in social protection and the individual's right to fair treatment as starkly as the law governing drug trafficking. The *Narcotic Drugs and Psychotropic Substances Act*, 1985 is India's primary legal instrument in this domain a statute of considerable ambition and, over four decades of operation, of equally considerable controversy.

Drug trafficking, broadly understood, encompasses the illegal cultivation, manufacture, possession, transportation, sale, distribution, and financing of narcotic drugs and psychotropic substances.⁴ It is not a simple transactional offence. It is a multi-layered criminal enterprise that operates across local, regional, national, and transnational boundaries simultaneously, distinguishable from mere personal consumption by the element of commercial intent and the scale of organised participation.

The legislative history of drug control in India traces a path from early and inadequate regulation under the *Opium Act*, 1857 and the *Dangerous Drugs Act*, 1930⁵ statutes that lacked both uniformity and the penal vigour needed to confront modern trafficking networks through to India's formal acceptance of international obligations under the United Nations drug conventions⁶ and, ultimately, to the enactment of the

³Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1, ¶ 103 (holding that the gravity of NDPS consequences demands 'scrupulous adherence' to procedural safeguards by investigation agencies).

⁴NDPS Act §§ 8, 15–25, 27A (proscribing cultivation, manufacture, possession, sale, purchase, transport, warehousing, import, export, and transshipment of narcotic drugs and psychotropic substances).

⁵The Opium Act, 1857 (Act 13 of 1857); The Dangerous Drugs Act, 1930 (Act 2 of 1930).

⁶Statement of Objects and Reasons, Narcotic Drugs and Psychotropic Substances Act, 1985.

comprehensive NDPS Act. India's geographical position between the Golden Crescent and the Golden Triangle⁷ rendered robust domestic legislation not merely desirable but urgent.

The four decades since 1985 have, however, exposed fault lines within the Act's design. Rising drug seizure statistics documented in successive NCB annual reports⁸ suggest that deterrence alone, however severely expressed, cannot suppress trafficking when enforcement infrastructure is inadequate, forensic analysis is delayed, trials are protracted, and the sentencing framework takes no account of individual culpability. These fault lines form the central preoccupation of the present article.

This article proceeds as follows. Part II defines the object and scope of the study. Part III identifies the research problem and frames the research questions. Part IV states the working hypothesis. Part V describes the methodology. Part VI acknowledges the study's limitations. Part VII sets out its scheme of organisation. Part VIII provides a literature review. Parts IX through XII present the substantive analysis. Part XIII offers conclusions and recommendations for reform.

II. OBJECT AND SCOPE OF STUDY

A. Objectives

The overarching purpose of this study is to subject the NDPS Act's drug trafficking provisions to a critical doctrinal and comparative examination. The following specific objectives guide the analysis.

First, the study aims to delineate the concept of drug trafficking and map the scope of its criminalisation under the NDPS Act, including the full range of activities covered, the definitional framework, and the quantity-based classification of offences.

Second, it undertakes a systematic analysis of the Act's substantive and procedural provisions including the quantity-based punishment structure, the reverse burden of proof under Section 35, and the bail restrictions under Section 37⁹ to assess the internal coherence and external adequacy of the legislative scheme.

Third, the study critically evaluates whether the mandatory minimum sentencing framework achieves proportionality across the full range of offenders and circumstances

⁷United Nations Office on Drugs and Crime (UNODC), World Drug Report 2023, at 12–15.

⁸Narcotics Control Bureau, Annual Report 2022–2023 (Ministry of Home Affairs, Government of India, 2023), at 4–7.

⁹NDPS Act §§ 35, 37 (reverse burden of proof and stringent bail conditions respectively).

captured by its provisions, or whether it produces systematically unjust outcomes for peripheral participants and addiction-driven offenders.

Fourth, it examines the landmark judicial decisions of the Supreme Court of India most notably *State of Punjab v. Baldev Singh*,¹⁰ *Tofan Singh v. State of Tamil Nadu*,¹¹ and *Mohan Lal v. State of Punjab*¹² to trace the judiciary's role as a constitutional balancing mechanism.

Fifth, the study assesses whether the Act has achieved its purpose of controlling drug trafficking in India and formulates evidence-based recommendations for legislative reform.

B. Scope

The scope of the study is primarily confined to Indian law, with specific reference to the NDPS Act, 1985 as amended. It examines substantive provisions governing offences and punishments, the procedural framework, and the body of judicial decisions by the Supreme Court and High Courts. A selective comparative analysis of drug control legislation in Portugal, the United Kingdom, and the United States is undertaken to derive relevant lessons for potential reform of the Indian framework.¹³

III. RESEARCH PROBLEM

The central problem animating this research is whether the stringent punishments prescribed under the NDPS Act genuinely operate as an effective deterrent against drug trafficking, or whether the practical realities of enforcement and the structural rigidities of the Act render their severity more aspirational than effective. This core question generates five subsidiary problems.

A. Persistent Growth of Drug Trafficking

Despite the existence of severe penal sanctions since 1985, drug trafficking continues to expand in scale and organisational sophistication across India. Rising seizure statistics recorded in successive NCB Annual Reports¹⁴ raise a fundamental empirical

¹⁰State of Punjab v. Baldev Singh, (1999) 6 SCC 172.

¹¹Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1.

¹²Mohan Lal v. State of Punjab, (2018) 17 SCC 627.

¹³Glenn Greenwald, Drug Decriminalisation in Portugal: Lessons for Creating Fair and Successful Drug Policies (Cato Institute, 2009); Misuse of Drugs Act, 1971 (UK); Controlled Substances Act, 21 U.S.C. §§ 801–971 (1970).

question: if deterrence is the stated justification for mandatory minimum sentences, why has the trajectory of drug-related criminality moved persistently upward?

B. Gaps in Enforcement Infrastructure

The NDPS Act confers extensive investigative and coercive powers on enforcement agencies¹⁵, yet the continued prevalence of trafficking suggests a significant gap between statutory authority and operational effectiveness. Inadequate training, delayed forensic analysis, jurisdictional overlaps, and insufficient modern surveillance technology collectively undermine the Act's practical deterrent force. The courts have identified procedural non-compliance during search and seizure operations as the primary cause of acquittals in NDPS prosecutions.¹⁶

C. Disproportionality in Sentencing

The quantity-based sentencing framework can produce disproportionate outcomes in individual cases. A courier transporting a commercial quantity of a narcotic substance may attract the same mandatory minimum sentence as the kingpin of the operation, because the statutory threshold takes no account of the accused's role, culpability, or intent.¹⁷ This outcome sits in direct tension with the foundational principle that punishment ought to be proportionate to individual moral responsibility.

D. Prolonged Pre-Trial Detention

The restrictive bail conditions under Section 37 of the Act, while serving a legitimate purpose of preventing flight risk and re-offending, have contributed to lengthy pre-trial detention in a significant number of cases that ultimately result in acquittal. The Supreme Court has recognised that such prolonged incarceration constitutes a violation of the right to personal liberty under Article 21 of the Constitution.¹⁸

E. Risk of Misuse

The concentration of investigative powers in enforcement agencies, combined with the reverse burden of proof and strict bail conditions, creates structural conditions susceptible to misuse. Cases of wrongful implication and fabricated evidence judicially

¹⁵NDPS Act §§ 41–43 (conferring powers of search, seizure, and arrest without warrant upon authorised officers in specified circumstances).

¹⁶State of Punjab v. Baldev Singh, (1999) 6 SCC 172, ¶ 46 (holding non-compliance with § 50's right-to-search notification a fatal procedural defect vitiating the entire prosecution).

¹⁷Noor Aga v. State of Punjab, (2008) 16 SCC 417, ¶ 60 (expressing concern that quantity-based mandatory sentences fail to differentiate between the organised trafficker and the peripheral courier).

¹⁸Constitution of India art. 21; Hussainara Khatoon v. Home Secretary, State of Bihar, (1980) 1 SCC 81 (recognising the right to a speedy trial as a component of the fundamental right to life and personal liberty).

noticed in leading decisions¹⁹ have disproportionately affected marginalised and economically vulnerable populations, raising serious equality concerns under Article 14 of the Constitution.

IV. RESEARCH QUESTIONS

The following primary research questions organise and direct the substantive inquiry of this article:

(i) What constitutes drug trafficking under the NDPS Act, and how does the Act define and categorise the constituent offences across the spectrum from cultivation to financing?

(ii) What is the nature, extent, and graduated structure of the punishments prescribed under the Act, and on what conceptual basis are distinctions drawn between different categories of offenders?

(iii) Are the punishments prescribed under the Act effective as a deterrent against drug-related crime, and what empirical and structural factors condition their deterrent impact?

(iv) How have Indian courts interpreted and applied the Act's provisions particularly in relation to procedural safeguards, the reverse burden of proof, and the rights of the accused and what constitutional principles have guided that interpretation?

(v) What are the principal challenges in the enforcement of the Act, and what structural, institutional, and legislative reforms are required to address them without sacrificing deterrence?

V. HYPOTHESIS

The working hypothesis of this study is twofold. First, it is submitted that while the stringent punishments prescribed under the NDPS Act carry considerable theoretical deterrent potential as evidenced by the legislature's deliberate adoption of mandatory

¹⁹Mohan Lal v. State of Punjab, (2018) 17 SCC 627, ¶ 28–30 (condemning fabrication of evidence and mandating that the investigating officer be different from the informant).

minimum sentences, rigorous imprisonment, and substantial fines²⁰ their practical effectiveness as a check on drug trafficking is materially constrained by deficiencies in enforcement infrastructure, procedural lapses in investigation and trial, judicial delays, and a structural over-reliance on punitive rather than rehabilitative approaches to drug-related offending.

Second, it is hypothesised that the Act's deterrent potential can be more fully realised through a combination of: strengthened institutional capacity and procedural compliance in enforcement agencies; expedited NDPS trial processes; the introduction of carefully circumscribed judicial sentencing discretion for peripheral and addiction-driven offenders; and the systematic integration of rehabilitation and de-addiction pathways for offenders whose involvement is primarily attributable to substance dependency rather than commercial intent.²¹

These hypotheses are tested against the evidence gathered through doctrinal analysis, judicial interpretation, and comparative legal study in the substantive chapters that follow.

VI. METHODOLOGY

This study adopts a doctrinal method of legal research, simultaneously analytical and descriptive in character. The descriptive dimension involves a structured exposition of the NDPS Act's provisions the nature and classification of offences, the graduated structure of prescribed punishments, and the procedural safeguards mandated by the statute. The analytical dimension critically evaluates whether these provisions achieve their stated objectives and whether they are consistent with constitutional principles and broader criminal law jurisprudence.

Primary sources employed in this study include the text of the NDPS Act, 1985 (incorporating all subsequent amendments), the Constitution of India, the Code of Criminal Procedure, 1973, and the reported judgments of the Supreme Court and various High Courts. Secondary sources include legal commentaries and treatises, academic articles

²⁰NDPS Act § 31A (as amended by Act 2 of 1989); Union of India v. Ram Samujh, (1999) 9 SCC 429.

²¹Law Commission of India, Report No. 277: Wrongful Prosecution (Miscarriage of Justice): Legal Remedies 14–18 (2018).

published in peer-reviewed law reviews, reports of the Law Commission of India and the Narcotics Control Bureau, and publications of the United Nations Office on Drugs and Crime (UNODC).

A limited comparative analysis has been undertaken with reference to the legislative frameworks and empirical outcomes of drug policy in Portugal, the United Kingdom, and the United States. This comparative element is not intended to advocate the transplantation of foreign models into the Indian legal system but to illuminate, through contrast and analogy, avenues for reform that are sensitive to Indian constitutional values and enforcement realities.

Citations throughout this article follow the Bluebook system of legal citation, adapted for Indian legal sources, with full citations provided in footnotes at the bottom of each page.

VII. LIMITATIONS OF THE STUDY

This research is primarily doctrinal in character and is consequently subject to the inherent limitations associated with that methodology. It relies exclusively on secondary sources published legal texts, peer-reviewed journal articles, law commission reports, and reported judicial decisions and does not incorporate primary empirical data gathered through field interviews, court observation, surveys, or case studies with law enforcement personnel or defendants.

As a consequence, the study may not fully capture the practical realities of NDPS enforcement at the ground level, including regional variations in investigative practice, prosecutorial strategies, and judicial approach across different High Court jurisdictions. A field-based study would complement and enrich the doctrinal analysis offered here, and such a study is recommended as a direction for future research.

Furthermore, the comparative analysis is necessarily selective. Only three foreign jurisdictions Portugal, the United Kingdom, and the United States are examined, and only those features of their frameworks that are most directly relevant to the Indian reform agenda are considered. A more expansive comparative survey, including jurisdictions such as the Netherlands, Singapore, or Thailand, would provide a richer basis for policy recommendations.

Notwithstanding these limitations, the doctrinal method remains the most appropriate and rigorous approach for a research article whose central objectives are statutory analysis, judicial interpretation, and legal policy prescription. The limitations identified are inherent to the genre and do not diminish the validity of the analytical conclusions reached.

VIII. SCHEME OF STUDY

The article is organised into thirteen parts. Part I introduces the subject matter, its historical background, and the article's central preoccupations. Parts II through VII present the methodological framework object and scope, research problem, research questions, hypothesis, methodology, and limitations respectively.

Part VIII sets out the present scheme of organisation. Part IX provides a literature review surveying the principal scholarly contributions to the field. Part X analyses the legal framework of the NDPS Act, including its legislative history, key definitions, offence structure, punishment provisions, and special procedural mechanisms.

Part XI examines the role of the judiciary in interpreting the Act, with detailed treatment of landmark Supreme Court decisions and the courts' approach to proportionality and procedural safeguards. Part XII undertakes a comparative analysis of drug control frameworks in Portugal, the United Kingdom, and the United States, drawing lessons for Indian legislative reform.

Part XIII presents the study's principal findings and recommendations for reform, followed by concluding observations. A complete bibliography of primary and secondary sources is appended at the end of the article.

IX. LITERATURE REVIEW

The scholarly literature on drug trafficking law in India is, relative to the importance of the subject, modest in volume but substantive in analytical quality. This literature review surveys the principal contributions across three categories: doctrinal legal scholarship, socio-legal and criminological analysis, and comparative and international studies.

A. Doctrinal Legal Scholarship

The most authoritative practitioner commentary on the NDPS Act is Ratanlal and Dhirajlal's *The Narcotic Drugs and Psychotropic Substances Act*, now in its fifth edition, which provides a section-by-section analysis of the Act's provisions, incorporating judicial decisions up to the date of publication. The work is indispensable as a reference for the structure of offences and punishments but does not engage deeply with normative questions of proportionality or constitutional adequacy.

Usha Ramanathan's seminal article, 'The NDPS Act and the Problem of Mandatory Sentencing' (2006), published in the *Journal of the Indian Law Institute*, was among the first scholarly interventions to identify the disproportionality inherent in the quantity-based sentencing framework. Ramanathan argued that the legislature's decision to remove judicial discretion at the lower end of the sentencing range ostensibly to guarantee severity had the paradoxical effect of producing acquittals, since courts aware of an imminent disproportionate sentence tended to scrutinise the prosecution evidence more rigorously.

Mrinal Satish's article 'Discretion, Discrimination and the Rule of Law: Reforming India's Drug Law' (2012) extended Ramanathan's argument by documenting the socioeconomic profile of NDPS accused predominantly low-income, marginalised individuals and arguing that the mandatory minimum framework, applied without nuance, effectively converts a law designed to target organised traffickers into an instrument of oppression of the economically vulnerable. Satish's proposed solution the introduction of a statutorily constrained safety-valve mechanism analogous to the American model²² has directly informed the reform recommendations advanced in Part XIII of this article.

K.D. Gaur's *Criminal Law: Cases and Materials* and P.S.A. Pillai's *Criminal Law* provide essential doctrinal foundations for understanding the intersection of general criminal law principles particularly the presumption of innocence, the standard of proof, and the proportionality of punishment with the special provisions of the NDPS Act. These texts contextualise the Act within the broader architecture of Indian criminal jurisprudence.

B. Socio-Legal and Criminological Analysis

The Narcotics Control Bureau's *Annual Report 2022–2023*²³ provides the most current quantitative data on drug seizures, arrests, and prosecutions under the NDPS Act.

²²18 U.S.C. § 3553(f) ('safety valve' provision permitting departure from mandatory minimums for non-violent first-time drug offenders meeting specified criteria).

While the Report serves primarily administrative purposes and does not offer normative analysis, its data are essential for evaluating the empirical proposition that severe penal sanctions deter trafficking activity. The persistent year-on-year increases in seizure volumes documented in successive annual reports constitute the primary empirical challenge to the Act's deterrence thesis.

The UNODC *World Drug Report 2023*²⁴ situates India's drug trafficking challenge within global patterns of production, transit, and consumption. Its analysis of the Golden Crescent and Golden Triangle dynamics, and India's position as a transit corridor and end-consumer market within these networks, provides essential geopolitical context for the domestic legal analysis.

C. Comparative and International Studies

Glenn Greenwald's monograph *Drug Decriminalisation in Portugal: Lessons for Creating Fair and Successful Drug Policies* (Cato Institute, 2009) remains the most rigorous English-language account of Portugal's landmark 2001 decriminalisation reform. Greenwald's empirical findings documenting reductions in drug-related deaths, HIV infection rates, and incarceration without corresponding increases in use rates²⁵ have been widely cited in international drug policy debates and provide the principal empirical basis for the rehabilitation-oriented reform recommendations advanced in this article.

The Law Commission of India's *Report No. 277: Wrongful Prosecution (Miscarriage of Justice): Legal Remedies* (2018), while not specifically focused on the NDPS Act, contains observations directly relevant to the Act's misuse problem particularly its findings regarding the vulnerability of accused persons to wrongful prosecution under statutes that vest broad investigative powers in enforcement agencies without adequate accountability mechanisms.²⁶

What the existing literature has not yet systematically addressed is the triangular relationship between the Act's deterrence architecture, its proportionality deficit, and the structural capacity of India's enforcement and adjudication systems. It is precisely this gap that the present article seeks to fill.

²⁵Greenwald, *supra* note 20, at 1–2.

X. LEGAL FRAMEWORK: THE NDPS ACT, 1985

A. Legislative History and Key Definitions

The NDPS Act was enacted on 14 November 1985 and came into force on the same date.²⁷ Its primary objectives were threefold: to consolidate and amend India's pre-existing narcotic drugs legislation; to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances; and to give effect to India's obligations under the international conventions to which it was then a party. The Act has been amended several times since enactment most significantly in 1988, 2001, and 2014²⁸ with the 2014 amendment seeking to decriminalise personal consumption of small quantities for addicts while maintaining strict penal treatment for traffickers.

Section 2 of the Act contains its foundational definitional architecture. 'Narcotic drug' is defined to include coca leaf, cannabis, opium, and allied substances.²⁹ 'Psychotropic substance' refers to any natural or synthetic substance included in the Schedule.³⁰ The term 'illicit traffic,' defined expansively under Section 2(viia), encompasses every meaningful phase of the supply chain from cultivation through to financing. The quantity classification small, intermediate, and commercial is prescribed by executive notification under Section 2(via),³¹ an exercise of delegated legislative authority whose scope and limits have attracted judicial scrutiny.

B. Offences, Punishment Structure, and Special Provisions

Section 8 of the Act contains the general prohibition, forbidding any person from producing, manufacturing, possessing, selling, purchasing, transporting, warehousing, using, consuming, importing, exporting, or transshipping any narcotic drug or psychotropic substance except for medical or scientific purposes.³² Sections 15 through 25 prescribe specific offences and graduated punishments for activities involving different categories of controlled substances.³³ Each provision follows a tripartite structure: small quantity attracts

²⁷NDPS Act, Preamble (stating that the Act came into force on 14 November 1985).

²⁸Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2014 (Act 16 of 2014); Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2001 (Act 9 of 2001).

²⁹NDPS Act § 2(xiv) (definition of 'narcotic drug').

³⁰Id. § 2(xxiii) (definition of 'psychotropic substance').

³¹Id. § 2(via); Ministry of Finance, Department of Revenue, Notification S.O. 1055(E) (Oct. 19, 2001).

³²NDPS Act § 8.

³³Id. §§ 15–25 (drug-specific offences and graduated punishments).

up to six months' imprisonment or a fine; intermediate quantity attracts up to ten years' rigorous imprisonment and a fine up to one lakh rupees; and commercial quantity triggers a mandatory minimum of ten years' rigorous imprisonment, extendable to twenty years, with a mandatory fine of not less than one lakh rupees.

Section 27A, introduced by the 1988 amendment, criminalises the financing of illicit traffic and the harbouring of traffickers, imposing a mandatory minimum of ten years' rigorous imprisonment extendable to twenty years.³⁴ Section 31 provides for enhanced punishment upon conviction for a second or subsequent commercial-quantity offence.³⁵ Section 37 imposes a two-limbed mandatory precondition for bail in serious NDPS cases³⁶, while Section 35 reverses the ordinary burden of proof by presuming culpable mental state on the part of the accused.³⁷

XI. JUDICIAL INTERPRETATION OF THE NDPS ACT

A. The Judiciary's Constitutional Role

The judiciary has served as the principal constitutional counterweight to the NDPS Act's severity. Given the Act's departure from ordinary criminal law principles through mandatory minimum sentences, reverse burden of proof, and restrictive bail the courts have consistently emphasised that each departure from standard criminal procedure must be disciplined by strict compliance with the Act's own procedural safeguards. The broad jurisprudential theme is that severity of consequence demands a corresponding rigour of process.

B. Landmark Decisions

State of Punjab v. Baldev Singh (1999)³⁸ remains the foundational procedural-safeguard decision under the Act. The Supreme Court's Constitution Bench held that Section 50 requiring an accused to be informed of the right to be searched before a gazetted officer or magistrate imposes a mandatory, not merely directory, obligation. Non-compliance vitiates the search and renders evidence obtained thereby inadmissible. The

³⁴Id. § 27A (financing of illicit traffic and harbouring of traffickers — minimum ten years' rigorous imprisonment).

³⁵NDPS Act § 31 (enhanced punishment for repeat offenders).

³⁶NDPS Act § 37(1)(b) (two-limbed restriction on bail for offences punishable with five or more years' imprisonment).

³⁷NDPS Act § 35 (presumption of culpable mental state — intention, motive, knowledge, or belief — rebuttable by the accused).

³⁸*State of Punjab v. Baldev Singh*, (1999) 6 SCC 172, ¶ 46.

Court characterised the right as a substantive legal protection, not a technicality, whose breach causes irreparable prejudice.

In *Noor Aga v. State of Punjab* (2008),³⁹ the Court examined the interplay between the reverse burden under Sections 35 and 54 and the constitutional right to fair trial under Article 21. While affirming the reverse burden's constitutional validity, the Court held that the prosecution must first establish foundational facts particularly conscious possession before the presumption can be invoked. A mechanical application of the reverse burden without this preliminary prosecutorial discharge was held constitutionally impermissible.

Tofan Singh v. State of Tamil Nadu (2021)⁴⁰ resolved a long-running evidentiary controversy by holding that officers empowered under the NDPS Act qualify as 'police officers' within the meaning of Section 25 of the Indian Evidence Act, 1872. Confessions made to such officers are accordingly inadmissible, significantly altering the prosecutorial landscape and reinforcing the constitutional protection against self-incrimination under Article 20(3).

Mohan Lal v. State of Punjab (2018)⁴¹ addressed the structural integrity of NDPS investigations by holding that an accused is denied a fair trial when the informant and the investigating officer are the same individual. The inherent conflict of interest vitiates the investigation and violates Article 21. This decision has had a systemic impact, effectively requiring enforcement agencies to institutionalise a separation of functions between intelligence and investigation.

C. Proportionality and Systemic Challenges

While consistently upholding the Act's constitutional validity, the courts have demonstrated sensitivity to proportionality concerns. In cases involving persons of limited culpability, courts have tended to scrutinise the element of 'conscious possession' rigorously⁴² an interpretive technique that effectively creates a judicial safety valve within the constraints of mandatory sentencing. Systemic challenges identified in judicial decisions include: persistent procedural errors in search and seizure operations⁴³; misuse of

³⁹Noor Aga v. State of Punjab, (2008) 16 SCC 417, ¶ 55.

⁴⁰Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1, ¶ 103.

⁴¹Mohan Lal v. State of Punjab, (2018) 17 SCC 627, ¶ 32.

⁴²Madan Lal v. State of Himachal Pradesh, (2003) 7 SCC 465 (strictly construing 'conscious possession' to avoid disproportionate outcomes for accused of limited culpability).

⁴³State of Punjab v. Baldev Singh, (1999) 6 SCC 172, ¶ 30 (identifying procedural lapses by investigating officers as the leading cause of acquittals in NDPS prosecutions).

investigative powers against vulnerable populations⁴⁴; inadequate functioning of the special courts established under Chapter VII of the Act⁴⁵; and prolonged pre-trial detention in cases ultimately resulting in acquittal, in violation of Article 21.⁴⁶

⁴⁴Mohan Lal v. State of Punjab, (2018) 17 SCC 627, ¶ 28–30.

⁴⁵NDPS Act §§ 36–36D (establishment, jurisdiction, and powers of special courts for NDPS offences).

⁴⁶Hussainara Khatoon v. Home Secretary, State of Bihar, (1980) 1 SCC 81; Akhtari Bi v. State of M.P., (2001) 4 SCC 355 (granting bail on account of prolonged pre-trial detention in NDPS case).

XII. COMPARATIVE ANALYSIS AND LESSONS FOR INDIA

A. The Portuguese Model

Portugal decriminalised the personal possession and use of all drugs in 2001, while retaining criminal sanctions for trafficking.⁴⁷ Personal possession cases are referred to multidisciplinary 'dissuasion commissions' that may impose administrative sanctions or order treatment. The empirical results have been striking: drug-related deaths declined sharply, HIV infection rates among intravenous users fell significantly, and drug-related incarceration decreased, without any corresponding increase in drug use rates. Portugal's experience offers the most persuasive available evidence that public health outcomes can be improved by treating personal use as a health issue rather than a criminal one, while maintaining full criminal deterrence for trafficking.

B. The United Kingdom and United States

The United Kingdom's *Misuse of Drugs Act*, 1971 classifies controlled substances into Classes A, B, and C, with penalties calibrated accordingly, but retains judicial sentencing discretion.⁴⁸ The retention of discretion allows courts to impose proportionate sentences across the full range of individual circumstances a flexibility that the NDPS Act, with its mandatory minimum framework, conspicuously lacks.

The United States federal framework under the *Controlled Substances Act* prescribes mandatory minimum sentences based on drug quantity and prior convictions⁴⁹ a structure broadly analogous to the NDPS Act. The American experience has, however, generated sustained and well-documented criticism regarding the racially and socioeconomically disproportionate distribution of mandatory sentences, prompting Congress to introduce the 'safety valve' provision under 18 U.S.C. § 3553(f), which allows departure from mandatory minimums for non-violent, first-time offenders meeting specified criteria.⁵⁰

C. Lessons for India

⁴⁸Misuse of Drugs Act, 1971 (UK), §§ 2–4.

⁴⁹Controlled Substances Act, 21 U.S.C. § 841 (2018); Fair Sentencing Act of 2010, Pub. L. No. 111-220.

Three lessons emerge from the comparative survey. First, Portugal's experience demonstrates that public-health objectives for addiction-driven offending are better served by treatment and rehabilitation than by incarceration. Second, the UK model shows that retaining judicial sentencing discretion is compatible with strong deterrence indeed, discretion may enhance deterrence by improving the legitimacy and perceived fairness of the penal system. Third, the American experience with mandatory minimums, and the legislative corrective of the safety valve, provides a practical template for Indian legislative reform that preserves the deterrent architecture for serious traffickers while avoiding its most disproportionate applications.

XIII. FINDINGS, RECOMMENDATIONS, AND CONCLUSION

A. Principal Findings

This study has reached the following principal findings. First, the NDPS Act provides a comprehensive and structurally coherent legal framework for addressing drug trafficking, covering every stage of the supply chain and incorporating procedural mechanisms designed to address the evidentiary challenges of prosecuting organised crime.

Second, the Act's deterrent potential is substantially undermined in practice by systemic enforcement deficiencies including procedural non-compliance during search and seizure, delayed forensic analysis, and inadequate inter-agency coordination that result in a disproportionately high acquittal rate relative to the severity of the statutory penalties.

Third, the quantity-based mandatory sentencing framework, while providing a useful structural baseline for prosecutorial and judicial decision-making, does not adequately account for individual culpability. The consequence is that peripheral participants, couriers, and addiction-driven offenders may face the same mandatory sentence as the orchestrators of large-scale trafficking networks a result that violates the proportionality principle recognised as a component of Article 21 by the Supreme Court.⁵¹

Fourth, the restrictive bail provisions under Section 37, while serving legitimate anti-flight and anti-recidivism purposes, have contributed to prolonged pre-trial detention in cases subsequently resulting in acquittal a pattern that constitutes a recurring infringement of the constitutional right to personal liberty.

⁵¹Noor Aga v. State of Punjab, (2008) 16 SCC 417, ¶ 60 (observing that the quantity-based framework operates as an imperfect proxy for individual culpability).

Fifth, the judiciary has functioned as a vital constitutional corrective, but the constraints of mandatory sentencing limit its capacity to achieve proportionality in individual cases.

B. Recommendations for Reform

Five reforms are recommended. First, the legislature should introduce a statutory safety-valve mechanism⁵² allowing courts to impose sentences below the mandatory minimum in tightly defined circumstances specifically, cases involving first-time offenders, peripheral participants, or persons whose involvement is demonstrably attributable to addiction rather than commercial intent.

Second, the Government should invest substantially in upgrading the technical capacity, training, and accountability of NDPS enforcement agencies, and in reducing forensic analysis delays that currently contribute to both prolonged detention and prosecution failure.

Third, the rehabilitation provisions under Chapter IV of the Act⁵³ should be systematically activated through dedicated diversion programmes, in which first-time offenders driven by addiction are referred to treatment in lieu of prosecution. The empirical success of this approach in Portugal provides strong evidentiary support for its adoption.

Fourth, the special courts established under Chapter VII should be adequately resourced and a statutory time-limit for NDPS trials introduced, to address the chronic delays that amplify the injustice of prolonged pre-trial detention.

Fifth, the quantity thresholds specified by executive notification under Section 2(viia) should be subject to periodic expert review to ensure that they remain calibrated to contemporary street-level purity levels, market conditions, and the emergence of new psychoactive substances.

C. Conclusion

The NDPS Act, 1985 represents a serious, broadly well-conceived, and in many respects effective legislative response to the complex problem of drug trafficking. Its comprehensiveness of coverage, its graduated sentencing architecture, and its procedural

⁵³NDPS Act §§ 64A, 71 (provisions for treatment, maintenance, rehabilitation, and de-addiction of addicts).

innovations reflect a coherent legislative philosophy that prioritises deterrence and social protection. Four decades of operation have demonstrated both its utility and its limitations.

The central lesson of this analysis is that severe punishment on the statute book cannot substitute for effective enforcement in practice, and that a penal framework whose severity is not matched by a corresponding capacity to deliver certain, proportionate, and expeditious justice will fall progressively short of its objectives. The reforms recommended in this article are intended not to weaken the Act's deterrent architecture but to repair the fault lines that have prevented that architecture from functioning as its architects intended.

Ultimately, effective control of drug trafficking demands a holistic, multi-disciplinary strategy that integrates rigorous enforcement against organised traffickers with humane, evidence-based approaches to addiction for users. The NDPS Act, suitably reformed and vigorously implemented, can serve as the centrepiece of such a strategy but only if it is understood as one instrument among many in a broader framework of public health, social welfare, and constitutional justice, rather than as a self-sufficient answer to a problem whose roots lie as much in poverty, inequality, and despair as in criminality.