

PROPORTIONALITY IN NDPS SENTENCING: JUDICIAL APPROACHES

- Himanshu Priyadarshi*

Abstract

*The Narcotic Drugs and Psychotropic Substances Act, 1985 remains India's most stringent penal statute, designed to combat the menace of drug trafficking through mandatory minimum sentences, strict bail provisions, and reverse burdens of proof. Although its deterrence-based approach corresponds with international trends in drug regulation, it has consistently sparked concerns about the fairness and proportionality of sentencing. Proportionality, known in Indian constitutional law under Articles 14 and 21 as being proportionate to the nature of the crime as well as the role, responsibility and personal circumstances of the offender, is now in vogue. However, the NDPS Act often imposes the same legal penalties on various individuals, including occasional users, couriers, and organized traffickers, leading to systemic inequalities. This article explores how the courts have confronted these challenges by interpreting the statute in light of proportionality. It discusses significant decisions like the partial striking down of Section 32A in *Dadu @ Tulsidas*, the liberal interpretation given to judicial discretion under Section 32B in *Rafiq Qureshi*, *Gurdev Singh* and *Narayan Das* and unresolved controversy over mixture and quantity thresholds post *Hira Singh*. It also highlights judicial approaches to mitigating mechanisms under Sections 39 and 64A, proportionality in fines and default imprisonment, and the recognition of pre-trial incarceration as a form of de facto punishment. Drawing upon Indian case law, empirical studies, and comparative perspectives, the article argues that while courts have progressively embraced proportionality as a constitutional safeguard, structural rigidity in the NDPS framework continues to limit individualized justice. The article concludes by suggesting the adoption of structured sentencing guidelines and judicially developed checklists, ensuring that NDPS sentencing aligns deterrence with fairness, and severity with justice.*

Keywords: *Proportionality, NDPS Act, Sentencing, Judicial Approach, Constitutionality.*

* Research Scholar @ Faculty of Law, University of Lucknow; Email: himanshupriyadarshi.28@gmail.com

INTRODUCTION

The concept of proportionality in criminal law has acquired central importance in recent decades, reflecting a global recognition that punishments must not be excessive but instead commensurate with the nature and circumstances of the offence. Proportionality, as a principle, insists that sanctions imposed by the state balance the seriousness of the crime with the culpability of the offender.¹ In the Indian legal landscape, nowhere is this debate sharper than in the sentencing framework of the Narcotic Drugs and Psychotropic Substances Act, 1985. This legislation, intended as a deterrent against drug trafficking and abuse, imposes rigid sentencing structures that frequently trigger concerns about fairness, arbitrariness, and constitutional compliance.²

The NDPS Act, passed in 1985 to carry out India's international obligations under various drug control conventions, is one of the most stringent laws on narcotics in the country. It imposes minimum (mandatory) terms of imprisonment, from simple imprisonment for six months for small quantities to 10 years in reference to commercial quantity offences, accompanied by fines. Sections such as 31 (repeat offenders), 31A (death penalty for certain categories, later amended), and 32A (bar on suspension, remission or commutation of sentences) underscore the deterrence-oriented character of the law.³ Though these provisions aimed to create a strong deterrent against narcotics offences, they also built a system where a judge's ability to adjust a sentence to particular individual culpability was lost. A first-time courier who was simply transporting a package for survival wages could face the same mandatory punishment as an organizer or financier in an international drug syndicate. Such outcomes clash with the intuitive sense of justice that punishment must be proportionate, and they raise broader constitutional questions.⁴

In India, the principle of proportionality is grounded in Articles 14 and 21 of the Indian Constitution. Article 14 prohibits arbitrariness, requiring that like cases be treated alike but unlike cases differently and Article 21 provides the right to life and personal liberty, which

¹ Marie Manikis, "The Principle of Proportionality in Sentencing: A Dynamic Evolution and Multiplication of Conceptions," 59 *Osgoode Hall Law Journal* 587-628 (2022).

² Pratibha Chauhan and Uma Shanker Sharma, "Socio-Legal Analysis of Narcotic Drugs and Psychotropic Substances in India," 5 *ShodhKosh: Journal of Visual and Performing Arts* (2024).

³ Aman Rab, "The Congruity of Laws governing Narcotic drugs and Psychotropic Substances in India and the way forward," 6 *Journal of Positive School Psychology* (2022).

⁴ Pawan Kumar Saini and Dr. Sukhwinder Kaur, "Drug Abuse and the Law in India: Navigating Constitutional Challenges and Legal Reform," 6 *International Journal of Research Publication and Reviews* 65-70 (2025).

includes protection against excessive and disproportionate state action. The Supreme Court has affirmed that sentencing, as much as substantive criminalisation, must conform to these guarantees. In *Dadu @ Tulsidas v. State of Punjab*⁵, the Court overturned part of Section 32A of the NDPS Act, holding that a blanket bar on suspension of sentences even by courts was unconstitutional. This case marked a pivotal recognition that proportionality is not an abstract ideal but a constitutional requirement in sentencing practices.

Proportionality in sentencing thus functions as a double safeguard as it ensures both fairness to the offender and legitimacy of the criminal justice system.⁶ Excessive or unduly harsh sentences not only harm the individual but also weaken public confidence in the justice system.⁷ The NDPS Act, with its rigid thresholds, has therefore been under continuous judicial scrutiny to harmonise deterrence with constitutional proportionality.

The Indian experience with NDPS sentencing cannot be divorced from global debates. International monitoring bodies such as the INCB, the UNODC, and the Crime have stressed that disproportionate sentencing regimes often undermine justice and may breach human rights obligations. In 2016, the CND adopted Resolution 59/7, urging states to ensure that responses to drug-related offences are proportionate and respect fundamental rights. Similarly, in the run-up to the 2016 UN General Assembly Special Session on the World Drug Problem, civil society organisations and states emphasised that punishment for minor drug offences should be aligned with the gravity of conduct and not be excessively punitive. Comparative sentencing studies, such as those from Australia, also demonstrate how judicial discretion can balance deterrence with individualized justice. Against this backdrop, India's adherence to mandatory minimums appears increasingly rigid and out of step with evolving international standards.

Confronted with the conflict between statutory law and the constitution, Indian courts have developed interpretive methods to reestablish proportionality. The Supreme Court in *Rafiq Qureshi v. Narcotics Control Bureau*⁸ and later in *Gurdev Singh v. State of Punjab*⁹ clarified that indeed, Section 32B of the NDPS Act lists factors for imposing punishments greater than

⁵ (2000) 1 SCC 516.

⁶ M. J. Fish, "An Eye for an Eye: Proportionality as a Moral Principle of Punishment," 28 *Oxford Journal of Legal Studies* (2008).

⁷ *Supra* note 1.

⁸ (2019) 6 SCC 492.

⁹ AIR 2021 SC 1766.

the minimum as illustrative, which means there may be other factors that are not listed. This acknowledgement expanded the scope of judicial flexibility to customise sentencing based on the offender's role, the nature of the participation, and other aggravating or mitigating factors. Most recently, in *Narayan Das v. State of Chhattisgarh*¹⁰, the Court reaffirmed that the statutory minimum is not a de facto maximum, and that sentencing courts must record speaking reasons when deviating. At the same time, courts have drawn attention to the disproportionality created by the mixture rule, as settled in *Hira Singh v. Union of India*¹¹, where the total weight of a narcotic mixture (including neutral substances) determines the applicable punishment. This approach artificially inflates the seriousness of offences and punishes low-purity cases as if they involved pure contraband. The pending reconsideration of this issue by the Supreme Court signals an ongoing judicial struggle to reconcile statutory thresholds with proportionality.

The judicial approaches to proportionality in NDPS sentencing, situating them within constitutional, statutory, and international frameworks, sets out the statutory architecture of NDPS sentencing, traces constitutional foundations and the jurisprudence affirming proportionality as a safeguard, analyses judicial discretion in practice and explores spaces for leniency, including probation, treatment-linked immunity, and proportionality in fines and default imprisonment, and concludes by reflecting on emerging trends and recommending structured sentencing guidelines that align deterrence with fairness.

SENTENCING FRAMEWORK UNDER THE NDPS ACT 1985

The sentencing framework under the NDPS Act, 1985 reflects a conscious legislative choice to curb judicial discretion by prescribing mandatory minimum punishments. Unlike the IPC, which allows judges to calibrate punishment within a broad range, the NDPS Act seeks uniformity and deterrence by binding courts to rigid thresholds.

A central feature of this framework is the *quantity-based classification* introduced through the 2001 amendment. The law distinguishes between “small quantity,” “intermediate quantity,” and “commercial quantity,” with sentencing escalating accordingly. For example, Section 21 prescribes up to one year of imprisonment for possession of small quantity, rigorous imprisonment up to ten years for intermediate quantity, and a minimum of ten years

¹⁰ (2025) 3 SCC 241.

¹¹ (2020) 20 SCC 272.

(extendable to twenty years) plus a fine of at least one lakh rupees for commercial quantity¹². Similar provisions apply under Sections 22 (psychotropic substances), 23 (import/export), and 25 (permitting premises for drug offences). While this amendment aimed to rationalise punishment, critics note that its mechanical application often results in inequities, especially where low-purity mixtures, by sheer weight, cross the “commercial quantity” threshold¹³.

Beyond these classifications, the NDPS Act stipulates for *enhanced punishments for repeat offenders*. Section 31 prescribes up to one and a half times the maximum punishment and fine, while Section 31A introduced the death penalty for certain repeat offences involving commercial quantities. Although later amended, the very presence of a death penalty for non-violent drug offences demonstrated the severity underpinning the Act.¹⁴

Another controversial provision was Section 32A, which barred suspension, remission, or commutation of NDPS sentences, even by courts. This ouster of judicial power was challenged in *Dadu @ Tulsidas v. State of Punjab*, where the Supreme Court struck down the clause as unconstitutional, holding that courts cannot be deprived of their power to consider proportionality in sentencing.¹⁵ Similarly, bail under Section 37 is subject to onerous conditions, making pre-trial incarceration disproportionately long in many cases. Scholars argue that custody under such provisions often functions as punishment before conviction, undermining the principle of proportionality.¹⁶ At the same time, the Act contains limited spaces for leniency. Section 27 prescribes lighter penalties for drug consumption; Section 39 permits probation under the Probation of Offenders Act, 1958, in cases involving small quantities and addicts; and Section 64A grants immunity to addicts volunteering for de-addiction treatment. These provisions mark a recognition that addiction is a health issue, but their impact remains marginal due to low awareness and limited infrastructure.¹⁷

Section 32B is also an important provision, stating that aggravating factors should be taken into account by the courts (e.g., use of violence, minors, closeness to schools) when handing

¹² Dr. Sandeep Kumar, “Drug Abuse In India: Need and Efficacy of NDPS Act, 1985,” 11 *International Journal of Scientific Research* (2022).

¹³ *Supra* note 3.

¹⁴ Pratibha Chauhan and Uma Shanker Sharma, “Socio-Legal Analysis of Narcotic Drugs and Psychotropic Substances in India,” 5 *ShodhKosh: Journal of Visual and Performing Arts* (2024).

¹⁵ *Supra* note 5.

¹⁶ *Supra* note 3

¹⁷ Atul Ambekar et al., “Medicolegal Issues with Reference to NDPS and MHCA in Management and Rehabilitation of Persons with Substance Use Disorders,” 64 *Indian Journal of Psychiatry* 146–53 (2022).

down penalties that exceed the minimum. The Supreme Court has importantly stated that this list is illustrative, which enables courts to also take into account mitigating factors. In practice, however, many trial courts impose the statutory minimum without fully exercising this discretion, raising questions about whether proportionality is consistently applied.¹⁸ Finally, the NDPS Act prescribes high fines and default imprisonment. Courts have often imposed fines in lakhs of rupees, and default imprisonment for non-payment can extend incarceration significantly. The Supreme Court in *Shahejadkhan Mahebubkhan Pathan v. State of Gujarat*¹⁹ recognised that default imprisonment must be proportionate and not punish poverty itself.

Taken together, the sentencing framework under the NDPS Act demonstrates the tension between deterrence and fairness. Mandatory minimums, strict bail provisions, and the mixture rule illustrate a statute premised on severity, while judicial interventions, limited probationary provisions, and recognition of rehabilitation reflect attempts to restore balance. The NDPS Act's sentencing regime thus remains a site of constant contestation, where constitutional values of proportionality struggle against the statute's deterrence-driven rigidity.

CONSTITUTIONAL FOUNDATIONS AND JUDICIAL RECOGNITION OF PROPORTIONALITY

The doctrine of proportionality has long been recognised as an essential component of constitutional governance in India. Although the Constitution does not explicitly use the term, the principles underlying Articles 14 and 21 have given the judiciary a foundation to develop proportionality as a safeguard against arbitrary state action. Article 14, by mandating equality before law and equal protection of laws, prohibits excessive and arbitrary measures, while Article 21, through its guarantee of life and personal liberty, requires that any deprivation of liberty must be just, fair, and reasonable.

The Supreme Court's interpretation of these provisions has steadily expanded the role of proportionality. In *Chintaman Rao v. State of Madhya Pradesh*²⁰ and *State of Madras v. V.G.*

¹⁸ Dr. Sandeep Kumar, "Drug Abuse in India: Need and Efficacy of NDPS Act, 1985," 11 *International Journal of Scientific Research* (2022).

¹⁹ (2012) 10 SCC 219.

²⁰ AIR 1951 SC 118.

Row²¹, the Court stressed that restrictions on rights must not be arbitrary or excessive but must strike a balance between individual freedoms and public interest. The landmark ruling in *Maneka Gandhi v. Union of India*²² further broadened the scope of Article 21, holding that any law depriving a person of liberty must pass the test of reasonableness and non-arbitrariness. These early developments laid the groundwork for proportionality to become a touchstone of constitutional review.

In modern jurisprudence, proportionality was explicitly articulated in *Modern Dental College v. State of Madhya Pradesh*²³, where the Court adopted a structured four-part test: the measure must pursue a legitimate aim, be rationally connected to that aim, be necessary in the sense of the least restrictive means, and strike a balance between the importance of the aim and the restriction on rights. This structured test has since been extended to criminal law, with sentencing recognised as an area requiring proportional calibration.

In the context of the NDPS Act, the role of proportionality becomes very important. The Act has minimum punishments, no-bail conditions, and reversed burdens of proof. These features can undermine constitutional guarantees. Such provisions entail a risk of disproportionate results by treating unequal cases as equals, thereby breaching the provisions of Article 14.²⁴ Similarly, punishments that deprive liberty excessively or arbitrarily fall foul of Article 21's requirement of fairness.

Judicial interventions have reinforced this understanding. In *Dadu @ Tulsidas v. State of Punjab*²⁵, the Supreme Court struck down part of Section 32A which barred suspension of sentences, observing that courts cannot be stripped of their ability to assess circumstances and apply proportionality. This judgment was significant in affirming that sentencing is not merely a statutory exercise but a constitutional one. By safeguarding judicial discretion, the Court preserved the principle that punishment must be tailored to both offence and offender.

Subsequent cases have carried forward this reasoning. In *Mohd. Aslam v. Narcotics Control Bureau*²⁶, the Court stressed that sentencing discretion is necessary to avoid mechanical imposition of punishment that disregards individual circumstances. Similarly, in *Ravi Kumar*

²¹AIR 1952 SC 196.

²²(1978) 1 SCC 248.

²³(2016) 7 SCC 353.

²⁴*Supra* note 4.

²⁵*Supra* note 5.

²⁶(2006) 3 SCC 576.

v. *State of Rajasthan*²⁷, the Court emphasised that mandatory minimums risk eclipsing individualized justice, highlighting proportionality as a constitutional counterweight to legislative rigidity. Perhaps the most contested issue has been the “mixture rule.” In *E. Micheal Raj v. Intelligence Officer*²⁸, the Court held that only the pure drug content in a mixture should determine quantity and sentencing. This view, more consistent with proportionality, was later overturned in *Hira Singh v. Union of India*²⁹, where the Court ruled that the total weight of the mixture, including neutral substances, must be considered. This approach disproportionately punishes low-level offenders and undermines Article 21 demand for fairness. The continuing debate reflects judicial ambivalence about how to reconcile legislative intent with constitutional principles.

Beyond sentencing, NDPS provisions such as Sections 35 and 54 (reverse burden of proof) and Section 37 (restrictive bail conditions) have been criticised for infringing the presumption of innocence and right to liberty. In *Tofan Singh v. State of Tamil Nadu*³⁰, the Supreme Court took a significant step by holding that confessions to NDPS officers are inadmissible, reaffirming protections against self-incrimination under Article 20(3) and aligning procedural safeguards with proportionality.

Together, these constitutional and judicial developments underscore that proportionality is not peripheral but central to evaluating NDPS sentencing. While the legislature designed the Act with severity in mind, the judiciary has consistently invoked constitutional principles to soften its excesses. The recognition of proportionality ensures that while the state’s interest in combating narcotics remains strong, punishments do not cross into arbitrariness. The evolving jurisprudence reveals an ongoing dialogue: one where the Constitution demands fairness, even within a statute premised on deterrence.

JUDICIAL APPROACHES TO SENTENCING DISCRETION

The judiciary has played a central role in mediating the conflict between the rigidity of the NDPS Act and the constitutional requirement of proportionality. While the statute prescribes mandatory minimums and strict thresholds, courts have often sought interpretive avenues to restore balance. Their interventions demonstrate an evolving recognition that sentencing must

²⁷ (2020) 9 SCC 743.

²⁸ (2008) 5 SCC 161.

²⁹ *Supra* note 11.

³⁰ (2020) 9 SCC 1.

be individualized, reflecting both the gravity of the offence and the culpability of the offender.³¹

A major site of judicial discretion lies in Section 32B, which sets out factors that may justify a sentence higher than the minimum such as the use of violence, exploitation of minors, or offences committed near educational institutions. The Supreme Court has clarified that this list is not exhaustive but merely illustrative. In *Rafiq Qureshi v. Narcotics Control Bureau*³², the Court held that judges may consider a broader range of factors, including mitigating ones, in deciding the quantum of punishment. This approach was reaffirmed in *Gurdev Singh v. State of Punjab*³³, where the Court stressed that sentencing must not be mechanical and that judges must record reasons when departing from the minimum or maximum.

Judicial recognition of role-based culpability has also advanced proportionality in sentencing. Courts have begun distinguishing between couriers, addicts, and organisers in narcotics networks. In *Narayan Das v. State of Chhattisgarh*³⁴, the Court emphasised that punishment cannot be uniform for all participants in the drug trade. The decision underscored that while statutory thresholds guide sentencing, trial courts must assess the offender's role and background to ensure fairness. This recognition of differentiated culpability injects proportionality into a statutory regime otherwise characterised by uniformity.

The mixture rule has been particularly contentious. In *E. Micheal Raj v. Intelligence Officer*³⁵, the Court held that only the pure drug content of a mixture should determine sentencing. This interpretation was consistent with proportionality, as it distinguished between high- and low-purity drugs. However, in *Hira Singh v. Union of India*³⁶, the Court overturned this position, ruling that the total weight of the mixture, including neutral substances, must be considered. This ruling has been widely criticised for producing disproportionate results, as offenders dealing in low-purity narcotics can face the same penalties as those trafficking in pure substances. The case remains a focal point for debates on proportionality, with calls for reconsideration to align sentencing with fairness.

³¹ *Supra* note 1.

³² *Supra* note 8.

³³ *Supra* note 9.

³⁴ *Supra* note 10.

³⁵ *Supra* note 28.

³⁶ *Supra* note 11.

Courts have also invoked proportionality in relation to fines and default imprisonment. The NDPS Act authorises substantial fines, often accompanied by default imprisonment for non-payment. In *Shahejadhkan Mahebubkhan Pathan v. State of Gujarat*³⁷, the Supreme Court reduced the default imprisonment imposed, holding that the inability to pay a fine should not result in disproportionate punishment. This acknowledgement of socio-economic context highlights the judiciary's sensitivity to proportionality, ensuring that poverty does not translate into harsher sentences.

Another area where courts have moderated statutory severity is pre-trial detention. Under Section 37, bail is tightly restricted, leading to prolonged incarceration before trial. Several High Courts have granted bail on the ground that the accused had already spent excessive time in custody, implicitly recognising that pre-trial detention had become a form of punishment in itself.³⁸ Though not altering the statutory text, such judicial practices mitigate disproportionality by preventing indefinite deprivation of liberty pending trial.

Judicial reasoning has also been influenced by comparative and international perspectives. Courts have occasionally drawn on global standards to justify a proportional approach, noting that sentencing frameworks in jurisdictions such as Australia and Portugal balance deterrence with fairness by considering role, culpability, and rehabilitation.³⁹ These references, though limited, indicate the judiciary's awareness that proportionality is both a constitutional and international expectation.

Overall, judicial approaches reveal a pragmatic balancing act. Bound by mandatory minimums, courts have nonetheless expanded discretion through interpretive innovation, recognition of mitigating factors, moderation of fines, and differentiation of offender roles. At the same time, decisions like *Hira Singh* illustrate the limits of judicial intervention, as the Court has sometimes reinforced rather than softened legislative rigidity. The trajectory of case law shows that proportionality remains an evolving principle, one that courts continue to deploy in their effort to reconcile a deterrence-driven statute with constitutional fairness.

³⁷ *Supra* note 19.

³⁸ *Supra* note 3.

³⁹ *Major Drug Offences: Current Sentencing Practices*, (Sentencing Advisory Council, Melbourne, 2015).

SPACES FOR LENIENCY AND HUMANISATION

Despite its reputation as one of the harshest penal statutes in India, the NDPS Act does provide limited spaces where leniency and humanisation have been introduced. These provisions reflect an acknowledgement that not all offenders stand on the same moral plane and that addiction, socio-economic vulnerability, and rehabilitative needs demand differentiated responses. Yet, the narrow scope and inconsistent application of these provisions raise critical questions about whether they adequately secure proportionality.⁴⁰

The first significant provision is Section 27, which prescribes lighter punishments for the consumption of narcotic drugs or psychotropic substances. For possession of small quantities intended for personal consumption, the maximum punishment is one year of imprisonment or a fine, significantly lower than the penalties for trafficking. This provision marks a recognition that addicts should not be treated as traffickers. However, in practice, enforcement agencies often charge addicts under the more severe trafficking provisions, blurring the intended distinction.

A more explicit rehabilitative mechanism is found in Section 64A, which grants immunity from prosecution to addicts volunteering for de-addiction treatment. If an accused satisfies the court that they are an addict and undertake to undergo medical treatment, prosecution may be stayed or withdrawn.⁴¹ This provision reflects a shift towards treating addiction as a public health issue rather than purely a criminal act. Nonetheless, the success of Section 64A has been limited by inadequate rehabilitation infrastructure, stigma associated with addiction, and the reluctance of enforcement authorities to channel offenders towards treatment.⁴²

Probationary relief under Section 39 provides another avenue of leniency. It empowers courts to apply the Probation of Offenders Act, 1958, in cases involving small quantities or addicts. This provision recognises that incarceration may not always be the appropriate response, especially for first-time or low-level offenders. In *State of Punjab v. Hansa Singh*⁴³, the Punjab and Haryana High Court invoked Section 39 to release an addict on probation, emphasising the rehabilitative over the punitive. However, such applications remain sporadic,

⁴⁰ *Supra* note 1.

⁴¹ *Supra* note 17.

⁴² Dr. Sandeep Kumar, "Drug Abuse in India: Need and Efficacy of NDPS Act, 1985," 11 *International Journal of Scientific Research* (2022).

⁴³ 2001 Cri LJ 4010 (P&H).

and courts frequently default to custodial sentences, undercutting the scope of proportionality envisaged by the statute.

Judicial recognition of rehabilitation and treatment has also emerged in case law. In *E. Micheal Raj v. Intelligence Officer*⁴⁴, although the focus was on the mixture rule, the Court noted that addicts and traffickers could not be treated alike. More recently, in *Ravi Kumar v. State of Rajasthan*⁴⁵, the court remarked that proportional sentencing must consider not only the offence but also the possibility of rehabilitation of the offender. These interventions underline the judiciary's role in humanising a statute otherwise dominated by deterrence.

Further, proportionality has been invoked in relation to default imprisonment for non-payment of fines. Many NDPS convictions involve large fines beyond the capacity of poor offenders. In *Shahejadh Khan Mahebub Khan Pathan v. State of Gujarat*⁴⁶, the Supreme Court reduced default imprisonment, observing that the inability to pay should not aggravate punishment disproportionately. This reasoning aligns with constitutional principles of equality and fairness, ensuring that poverty does not translate into harsher penal outcomes.

An underexplored but significant space for leniency lies in judicial discretion in sentencing above the minimum. Section 32B lists aggravating factors for enhancing punishment, but courts have clarified that mitigating factors may also be considered. In *Rafiq Qureshi v. Narcotics Control Bureau*⁴⁷ and *Gurdev Singh v. State of Punjab*⁴⁸, the Court stressed that judges must tailor punishment to both the role of the offender and the circumstances of the crime. This interpretive flexibility has created opportunities for leniency where the statute appears rigid.

Finally, global debates and human rights frameworks reinforce these domestic spaces of leniency. International instruments emphasise alternatives to imprisonment for drug users and proportional sentencing that differentiates between consumption, small-scale trafficking, and organised crime. India's limited application of Sections 27, 39, and 64A reflects only a partial alignment with these standards. Strengthening these provisions, through better rehabilitation

⁴⁴ *Supra* note 28.

⁴⁵ *Supra* note 27.

⁴⁶ *Supra* note 19.

⁴⁷ *Supra* note 8.

⁴⁸ *Supra* note 9.

facilities, awareness among judges and prosecutors, and clear guidelines, would embed proportionality more deeply within the NDPS framework.

Thus, while the NDPS Act is primarily punitive, its few provisions of leniency and judicial interpretations aimed at humanisation show that proportionality can be advanced within the statutory framework. Yet, their limited use highlights the urgent need for systematic reforms to ensure that addicts, small-time offenders, and vulnerable individuals are not swallowed by the Act's overwhelming severity.

CONCLUSION

The debate on proportionality in sentencing under the NDPS Act epitomises the tension between deterrence and fairness, between the sovereign's duty to combat a grave social menace and its constitutional obligation to respect individual rights. From the statute's inception in 1985, India chose a model of severity, guided by international obligations and domestic anxieties about drug trafficking. The NDPS Act embodied this choice by introducing mandatory minimums, strict liability, and curtailed judicial discretion. Yet over time, as the law was applied to thousands of cases, the rigidity of its sentencing framework exposed deep fissures. Small-time offenders, addicts, and vulnerable couriers were swept into the same punitive net as organised traffickers and syndicate leaders. This inability to distinguish between levels of culpability raised profound questions about whether the law, in its zeal for deterrence, had strayed from constitutional fairness.

Proportionality has therefore emerged not as a technical doctrine but as a moral compass guiding judicial scrutiny of NDPS sentencing. At its heart, proportionality insists that punishment must fit both the crime and the criminal. It seeks to avoid the two extremes of excessive severity and undue leniency by requiring a calibrated balance between harm caused, culpability of the offender, and the broader social purpose of punishment. Within the NDPS framework, this principle has gained prominence precisely because of the statute's inbuilt harshness. Without proportionality as a counterweight, sentencing under the Act risks becoming arbitrary, eroding public confidence in justice.

The judiciary has played a pivotal role in advancing this principle. Early cases, particularly *Dadu @ Tulsidas*, marked turning points by striking down legislative attempts to oust judicial discretion altogether. Subsequent decisions widened the interpretive space, clarifying that Section 32B is not an exhaustive list of aggravating factors and that mitigating

considerations must also shape sentencing outcomes. By distinguishing roles within drug networks, courts gradually recognised that a courier's culpability differs from that of a financier, and that addiction is qualitatively distinct from trafficking. These judicial pathways reintroduced nuance into a framework designed for uniformity, thereby aligning sentencing practices with constitutional standards.

At the same time, judicial approaches reveal both advances and limitations. The reaffirmation of the mixture rule in *Hira Singh* highlighted the judiciary's occasional deference to legislative rigidity, even when it produced disproportionate consequences. Similarly, the persistence of stringent bail conditions has left many accused languishing in pre-trial custody for years, a reality that undermines the presumption of innocence and violates proportionality in practice. These tensions underscore that while courts have been crucial in humanising NDPS sentencing, their capacity to transform the structural severity of the law is constrained. Lasting reform requires legislative intervention.

The spaces of leniency written into the NDPS Act such as Sections 27, 39, and 64A, suggest that Parliament was not entirely blind to the human dimension of narcotics offences. Yet these provisions remain underutilised. Probation for small-time offenders, immunity for addicts seeking treatment, and reduced penalties for consumption offences are all examples of proportionality embedded within the statute, but they have not been systematically applied. Weak rehabilitation infrastructure, lack of awareness among enforcement agencies, and judicial caution have combined to limit their effectiveness. As a result, these humane provisions function more as symbolic gestures than as robust safeguards. A proportionality-oriented approach demands that these spaces be revitalised, supported by practical mechanisms such as treatment centres, probation services, and sensitisation of trial courts.

The global context adds further urgency. Across jurisdictions, the principle of proportionality has become a hallmark of modern drug policy. Portugal's decriminalisation model, Latin America's constitutional recognition of privacy in personal drug use, and Australia's structured sentencing guidelines all show that proportionality is not only compatible with deterrence but essential for effective justice. International bodies, including the UN and OHCHR, have emphasized that disproportionate punishments violate human rights, and that drug control policies must differentiate between use, minor trafficking, and organised crime. By contrast, India's continued reliance on mandatory minimums and retention of the death penalty for repeat offences situate its regime at odds with evolving global standards. The

legitimacy of India's narcotics control system, both domestically and internationally, therefore depends on its willingness to embrace proportionality as more than a judicial afterthought.

Constitutionally, proportionality is deeply rooted in India's legal order. Articles 14 and 21 require that state action, whether legislative, executive, or judicial, be non-arbitrary, just, and fair. Sentencing that is grossly excessive or indifferent to individual circumstances violates these guarantees. The Supreme Court has consistently emphasised that proportionality is a part of the basic structure of constitutional review. Within the NDPS context, this means that the statute cannot be applied mindlessly. Punishment must be calibrated, reasons must be recorded, and judicial discretion must be meaningfully exercised. The constitutional demand for proportionality therefore acts as a constant reminder that the fight against drugs cannot come at the cost of justice itself.

Looking ahead, the future of sentencing lies in creating structured guidelines that put fairness at the center. These guidelines should clearly define different types of offenders, identify factors that can either lessen or worsen the severity of the crime, and offer practical tools for judges to go beyond the bare minimum punishments set by law. It's also crucial that these rules take into account social and economic backgrounds, ensuring that issues like addiction and poverty aren't treated as harshly as organized drug trafficking. Systems for probation and rehabilitation should be expanded, fines should match a person's ability to pay, and using jail as a default punishment should be carefully limited. These reforms wouldn't weaken deterrence; they'd actually make the justice system more credible and compassionate.

At its core, the discussion around proportionality in NDPS sentencing is a question of legitimacy. When the system imposes overly harsh punishments, it risks alienating the public, creating a sense of unfairness, and weakening the very foundation of the law. But when punishments are in line with the seriousness of the crime, it builds public trust and reinforces the moral authority of the state. For India, adopting proportionality isn't just about following international trends, it's about living up to its constitutional values of fairness and human dignity.