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NARCOTICS TRAFFICKING AND THE CRISIS OF CRIMINAL JURISPRUDENCE: A CRITICAL ANALYSIS OF PUNITIVE EXCEPTIONALISM UNDER THE NDPS REGIME

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Abstract

With their severe penalties, reversed burdens of proof, and weakened procedural protections, drug trafficking statutes have a unique place in contemporary criminal jurisprudence. The Narcotic Drugs and Psychotropic Substances Act, 1985 in India represents a punitive legislative response influenced by the global "war on drugs" narrative and international treaty responsibilities. The Act deviates from fundamental criminal law principles, such as the presumption of innocence, proportionality of punishment, and guarantees of a fair trial, while also attempting to discourage illicit trafficking. This essay critically investigates drug trafficking as a type of extraordinary criminal law in which regular constitutional safeguards are selectively limited for the sake of effective enforcement.

The study explores the changing role of Indian courts in recalibrating the balance between deterrence and due process through an examination of statutory provisions and significant court rulings like *Noor Aga v. State of Punjab* and *Tofan Singh v. State of Tamil Nadu*. It contends that the NDPS regime's quantity-based sentencing frequently ignores individual responsibility, erasing distinctions between addicts, couriers, and organized traffickers and producing disproportionate and occasionally unfair results. Alternative approaches that incorporate role-based culpability and public health concerns into drug control are further highlighted by a quick comparison of international jurisdictions. In its conclusion, the paper advocates for a shift in jurisprudence that is rights-conscious, maintaining the goal of fighting drug trafficking while realigning enforcement tactics with constitutional criminal justice principles.

Keywords: Narcotics Trafficking, Exceptional Criminal Law, NDPS Act, 1985, Reverse Burden of Proof, Proportionality in Punishment

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1. Introduction: Narcotics Trafficking and the Crisis of Criminal

Jurisprudence Narcotics trafficking is one of the most strictly regulated categories of crime in modern legal systems. In order to combat the illicit production, distribution, and consumption of narcotic drugs and psychotropic substances, legislators have adopted extraordinary penal measures in many jurisdictions.² In India, this response is embodied in the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), which imposes harsh penalties, reverses the burden of proof, and drastically restricts the legal framework governing narcotics offenses.

Narcotics offenses fall under a separate legal framework with mandatory minimum terms, presumptions of guilty mental state, and stringent bail requirements, in contrast to regular crimes covered by the Indian Penal Code.³ Due to these deviations, a parallel criminal judicial system has emerged in which constitutional safeguards, including the presumption of innocence, the prohibition on self-incrimination, and the proportionality of punishment, are either conditionally suspended or weakened. This has caused academics to wonder if the legislation against drug trafficking is an example of punitive excess that is incompatible with constitutional criminal jurisprudence or if it is a legitimate reaction to a unique social issue.⁴

This essay contends that India's narcotics trafficking jurisprudence exhibits a type of punitive exceptionalism in which the efficiency of enforcement is given precedence over fundamental criminal justice principles. Although Indian courts have made an effort to counteract this imbalance through procedural safeguards and constitutional interpretation, structural problems with the statutory framework still compromise due process and proportionality.

2. A Jurisprudential Framework for Treating Drug Trafficking as an Exceptional Crime

The term "exceptional criminal law" describes legal systems that deviate from standard criminal law principles on the grounds that some crimes endanger society's existence.⁵ National security crimes, money laundering, and terrorism are frequently linked to such regimes. Due to its alleged connections to cross-border criminal networks, public health emergencies, and organized crime, drug trafficking has come to be classified under this heading more and more.

² Narcotic Drugs and Psychotropic Substances Act, 1985.

³ Union of India v. Bal Mukund, (2009) 12 SCC 161.

⁴ Andrew Ashworth, Principles of Criminal Law (OUP).

⁵ David Dyzenhaus, The Constitution of Law.

Three characteristics are usually indicative of exceptional criminal law: increased state power, diminished procedural protections, and presumptions favouring conviction.⁶ All three are embodied in the NDPS Act. The legislature's use of deterrence theory is predicated on the idea that harsh penalties and strict procedures will lower drug-related offenses. However, deterrence-centric models can provide disproportionate results because they are unable to differentiate between different levels of responsibility.

The moral panic surrounding drug usage serves to further support this extraordinary therapy. The government can legitimize deviations from due process requirements by framing drug offenses as moral and societal problems rather than traditional crimes.⁷ The ensuing jurisprudence conflicts with constitutional norms that require justice even in the punishment of serious offenses by prioritizing the interests of society as a whole over individual rights.

3. The 1985 NDPS Act's Statutory Framework

In order to comply with India's international obligations, the NDPS Act was passed in order to reinforce and unify legislation pertaining to narcotic narcotics.⁸ Its goals include enforcing deterrent punishment, controlling lawful medicinal usage, and blocking illegal trafficking. The Act provides a strict statutory framework that drastically modifies conventional criminal law theories in order to accomplish these goals.

3.1 Punishment and Classification Based on Quantity

The NDPS Act's quantity-based penalty scheme is one of its most notable characteristics. Offenses are categorized as involving small, middle, or commercial quantities, and the severity of the sentence increases only according to the quantity.⁹ Although this method encourages consistency, it ignores the role, intent, and degree of involvement of the offender. As a result, a low-level courier transporting a commercial quantity might be punished similarly to an organized trafficker in charge of an entire distribution network.

3.2 The Reverse Burden of Proof and Presumptions of Guilt

The NDPS Act's Sections 35 and 54 essentially reverse the burden of proof by introducing

⁶ Lucia Zedner, "Exceptionalism and Criminal Law," *Criminal Law Review*.

⁷ Stanley Cohen, *Folk Devils and Moral Panics*.

⁸ Statement of Objects and Reasons, NDPS Act, 1985.

⁹ NDPS Act, ss. 21–23.

presumptions of guilty mental state and possession.¹⁰ The accused must demonstrate ignorance or lack of purpose after possession has been proven. The presumption of innocent, which forms the basis of criminal jurisprudence, is significantly different from such presumptions. Despite upholding these rules, the Supreme Court has issued a warning that careful procedural compliance is required when applying them.¹¹”

3.3 Procedural Protections

The NDPS Act's Section 50 offers procedural protections for searches and seizures, including the accused's right to be searched in front of a magistrate or gazetted officer. The prosecution's case is vitiated if these protections are not followed, as courts have stated time and time again.¹² But in reality, these rights are still being undermined by uneven enforcement procedures.

4. Constitutional Correctives and Judicial Interpretation

By serving as constitutional remedies to legislative inflexibility, Indian courts have significantly influenced the development of drug trafficking jurisprudence. Early on in the NDPS Act's history, judicial interpretation supported strong enforcement and prioritized deterrence over procedural justice.¹³ "But as time has gone on, the judiciary has come to understand how important it is to strike a balance between constitutional rights and enforcement goals.

The Supreme Court ruled in *Noor Aga v. State of Punjab* that strict attention to procedural safeguards and evidentiary standards is necessary due to the tight character of the NDPS Act.¹⁴ René The Court stressed that the prosecution's original obligation to prove foundational facts beyond a reasonable doubt is not relieved by the reversal burden of proof.

Beyond *Noor Aga* and *Tofan Singh*, Indian courts have come to understand that the NDPS Act's severity necessitates increased judicial attention. The Supreme Court emphasized that liberty cannot be surrendered at the altar of enforcement convenience in *Union of India v. Bal Mukund*, warning that severe fines cannot excuse careless deviations from procedural protections. This The Court reaffirmed that before statutory presumptions can be used, the

¹⁰ NDPS Act, ss. 35, 54.

¹¹ *Noor Aga v. State of Punjab*, (2008) 16 SCC 417.

¹² *State of Punjab v. Baldev Singh*, (1999) 6 SCC 172.

¹³ *State of Punjab v. Makhan Chand*, (2004) 3 SCC 453.

¹⁴ *Noor Aga v. State of Punjab*, (2008) 16 SCC 417.

prosecution must establish fundamental facts—such as a valid search, a proper seizure, and conscious possession—beyond a reasonable doubt.

This strategy has been mirrored by High Courts, which demand rigorous adherence to standing orders controlling the sampling, sealing, and storage of confiscated materials. It's Evidentiary integrity is essential to the right to a fair trial under Article 21, as evidenced by the numerous acquittals that have occurred as a result of chain of custody flaws. A rights-sensitive adjudicatory approach has gradually replaced blind reliance to enforcement agencies in this body of doctrine.

The Supreme Court's decision in *Tofan Singh v. State of Tamil Nadu*, which established that confessions given to NDPS officials are inadmissible because they are considered "police officers" for the purposes of Article 20(3) of the Constitution, marked a significant shift in jurisprudence.¹⁵ The right to self-incrimination was strengthened by this ruling, which also limited the scope of investigations.

However, the NDPS Act's statutory framework continues to limit judicial participation. Even in cases involving minor offenders, courts are frequently required to sustain mandated minimum terms, underscoring the constraints of adjudicatory discretion in the absence of legislative reform. This conflict highlights the larger constitutional conundrum that extraordinary criminal legislation present: whereas courts are able to interpret protections broadly, they are not allowed to change the law.

By reiterating due process standards in these rulings, constitutional courts have attempted to rebalance narcotics jurisprudence. Nonetheless, judicial actions continue to be case-specific and reactive, mainly preserving more general structural problems inside the NDPS framework.

5. The Problem of Proportionality in Drug Trafficking Penalties

According to the proportionality doctrine, the severity of the offense and the offender's guilt must be taken into account while determining punishment¹⁶." Quantity-centric sentencing frequently undermines proportionality under the NDPS framework. The law ignores contextual elements like addiction, economic compulsion, and marginal participation by equating quantity

¹⁵ *Tofan Singh v. State of Tamil Nadu*, (2020) 9 SCC 1.

¹⁶ *Modern Dental College v. State of Madhya Pradesh*, (2016) 7 SCC 353.

with blame.

There are serious human rights issues with the application of proportionality in drug trafficking cases, especially when it comes to Article 21 of the Indian Constitution. The substantive due process requirement that punishment be just, fair, and reasonable may be violated by imposing lengthy obligatory sentences without first conducting an individual evaluation. The socioeconomic factors that frequently force people to serve as transporters or middlemen in trafficking networks are ignored when quantity is used as a stand-in for guilt.

Addicts and couriers are disproportionately affected by this strategy since they are often at the bottom of trafficking networks.¹⁷ Such frameworks have come under increasing criticism from international human rights jurisprudence for imposing excessive punishment without individual evaluation. Serious questions about substantive due process and human dignity are raised by the prospect of lengthy obligatory sentences and, in some situations, the death penalty for repeat offenses.

Punitive drug control policies have drawn criticism from international human rights organizations for disproportionately harming vulnerable groups and adding to jail congestion. Recidivism rates have decreased without endangering public safety in areas that have implemented rehabilitation-oriented strategies. The idea that more severe sanctions always result in effective deterrence is called into question by this comparative research.

Although statutory restrictions restrict the practical use of proportionality, Indian courts have occasionally accepted these issues. Narcotics jurisprudence appears to be rooted in retributive logic rather than rehabilitative justice, as seen by the ongoing employment of presumptions and required minimums.

Although statutory limitations restrict judicial power, Indian courts have occasionally applied proportionality criteria. Consequently, the NDPS Act continues to yield results that challenge constitutional validity.

¹⁷ UNODC, World Drug Report.

6. Comparative Perspectives and Suggestions for Reform

Comparative jurisprudence provides insightful information about different approaches to drug control. Once a fervent supporter of mandatory minimum terms, the US has progressively shifted toward sentencing changes that prioritize judicial discretion.”¹⁸ The UK distinguishes between users, couriers, and organizers using a harm-based and role-oriented approach. Drug use is treated as a public health concern rather than a criminal offense under Portugal's decriminalization approach.

India should take into account measures that extend rehabilitative options for addicts, lessen reliance on presumptions, and implement role-based sentencing in light of these experiences. Digital chain-of-custody systems and body-worn cameras are examples of technological solutions that can improve enforcement while preserving due process.

There is a growing global consensus that punitive excess is ineffective when comparing legal measures to drug trafficking. Bipartisan opposition to mandatory minimum sentences in the US has resulted in changes that restore judicial discretion, especially for nonviolent drug offenders. The sentencing framework in the UK allows judges to differentiate between organizers and peripheral participants by emphasizing the offender's role and the extent of harm inflicted.

Portugal's decriminalization strategy, which views drug use as a public health concern rather than a criminal offense, symbolizes a paradigm change. Portugal has seen quantifiable reductions in overdose mortality and drug-related HIV infections by reallocating resources to treatment and harm reduction. These experiences highlight the necessity for flexibility and contextual sentencing, even though it might not be feasible to transplant foreign models in large quantities.

In India, extending diversionary measures for addicts and implementing role-based sentencing will bring drug laws into compliance with constitutional principles without compromising enforcement goals.

¹⁸ United States Sentencing Commission Reports.

7. Conclusion: Constitutional Criminal Justice from Punitive Exceptionalism

Undoubtedly, drug trafficking presents significant legal and social issues. However, the degradation of constitutional criminal law norms cannot be justified by the goal of deterrence. The NDPS Act is an example of a punitive exceptionalism regime that puts quantity above responsibility and conviction over justice. Although these impacts have been somewhat lessened by judicial interventions, a more thorough jurisprudential reorientation is still necessary. Narcotics trafficking laws must be based on proportionality, procedural justice, and respect for individual rights in order to reclaim constitutional criminal justice—all without sacrificing the justifiable goal of fighting illegal drugs.

A crucial area of jurisprudential dispute is the nexus between drug laws and constitutional rights. Together, Articles 14, 20(3), and 21 need justice, non-arbitrariness, and defense against coercive state action. The strength of these assurances is put to the test by exceptional criminal statutes such as the NDPS Act, which normalize deviations that would be illegal under regular criminal law.

In this situation, the judiciary's function as a guardian of the constitution becomes especially important. Courts maintain the criminal justice system's normative integrity by upholding procedural protections and evidentiary requirements. Sustainable transformation, however, necessitates legislative acknowledgement that efficient enforcement and rights protection are complementary rather than antagonistic.