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# Editorial Note

# The Juridical Construction of the Addict - A Critique of Moralistic Legal Frameworks and Distributive Justice

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*The legal system's persistent reliance on moralistic terminology and the "moral model" of addiction actively institutionalises stigma. Examples of this include disproportionate penalties for the consumption of drugs and polarising language such as "repeatedly back into the circle of lottery like a drug addict", as stated in B.R Enterprises v. State of U.P. This drives punitive legal policies that constitute a failure of distributive justice, transforming social and health issues into parochial frameworks. This analysis elaborates upon the inherent conflict between modern legal practice and the foundational concepts of human dignity. The law fails to regard the neurobiological complexity and socio-demographic determinants of compulsion and compulsive behaviour. The prioritisation of State power over welfare results in trauma and exclusion. The author advocates*

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*for a people-first language and administrative discourse as the necessary first step towards emancipatory justice.*

## I. Introduction

The relationship between India's legal framework and individuals suffering from addiction is governed by the language deployed within statutes and judicial opinions. The legal system's reliance on moralistic terminology and the accompanying moral model of addiction concerning substance abuse or behavioural disorders institutionalise stigma. Judges operating under the moral model may view an addiction-related offence as a wilful choice and sign of moral failing, increasing the potential of harsher sentencing or greater reluctance to grant bail.[1] This represents a failure of distributive justice, translating societal failure into moral fault culminating in a state of "embodied injustice" for the population.[2]

The author's central argument is that the enduring linguistic and conceptual architecture of addiction within the Indian law is not scientifically neutral. Rather, it is a deliberate mechanism of control. Additionally, the courts use stigma transfer by applying drug-related narratives to gambling to justify regulation. This characterizes the law as embodied injustice, a form of structural violence that inflicts physical trauma on the individual. By selectively adopting and perpetuating a simplified, moralistic conceptualisation of addiction, the legal system manages to justify the mass imposition of penal sanctions and control measures, disregarding overwhelming evidence of socio-demographic determinants of substance use and the neurobiological complexity of chronic compulsion. The law incorrectly prioritises maximising the State's punitive power under the umbrella term of "public security". Through this, the author argues that the State ignores its aim of public welfare, and instead it embeds stigma as the central pillar of legal governance.

Over the course of the paper, the author first describes the entrenchment of the moral model while contrasting it with modern clinical perspectives, which challenge the law's reliance on voluntarism. Secondly, the author interrogates the securitisation of addiction, where fear-based rhetoric has punitive state force. Thirdly, the author applies Rawlsian, Senian, and Nozickian frameworks to expose the failures of distributive justice. Lastly, the author advocates for linguistic emancipation.

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[1] The Narcotic Drugs and Psychotropic Substances Act 1985 (India), s 37 imposes a twin condition which significantly restricts judicial discretion. The requirement for the court to be satisfied that the accused is "not guilty" and "not likely to commit any offence while on bail" reverses the presumption of innocence. The pre-trial detention is particularly exhausting for individuals struggling with addiction who need rehabilitation.

[2] Mary Crossley, *Embodied Injustice: Race, Disability, and Health* (Cambridge University Press 2022) 1.

## II. Addressing Addiction in the Moral-Disease Dichotomy in Legal History

The moral model was historically constructed to serve mechanisms of social control, and understanding its colonial roots help contextualize modern penal policy. The discourse around addiction has been critiqued due to addiction being framed as a moral failing or personal weakness. It is often racialised and class-stigmatised substance use.[3] Examples of this include the opium associated with Chinese immigrants in the nineteenth century and the cocaine criminalisation tied to fears around African American communities in the United States. The narratives describing addictions often reflected colonial power structures, where alcohol and opium policies were used to control colonised populations and drug prohibition in colonies was tied to economic exploitation and social control. Scottish physician Norma Kerr argued before the Society for the Study and Cure of Inebriety that alcohol addiction was "for the most part the issue of certain physical conditions" and that it was comparable to established physical diseases such as gout, epilepsy, or insanity.[4]

Despite this early medical recognition and subsequent neuroscientific advancement, the dominant interpretive framework throughout most of the twentieth century, particularly within popular culture and legal systems, remained the moral model. The "moral model" of addiction indicates a failure of personal self-control.[5] This conceptual adherence has, and continues to have, catastrophic consequences globally. It provides the philosophical justification that allows lawmakers to adopt a harsh penal approach to drug use. This, in turn, translates to the mass incarceration of individuals struggling with substance abuse in numerous countries.

### A. Modern Clinical Perspectives and the Growing Dilemma

While the law remains anchored in nineteenth century moralism, medicine has moved onto a neurobiological understanding of addiction. This creates a friction between law and reality. Modern clinical perspectives challenge the oversimplified clinical model. The notion that individuals with substance use disorders are a homogenous group suffering from a chronic and relapsing disease is a reductive medical view which fails to recognise individual complexities.[6] It obscures the

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[3] Xi Chen, 'From Bank Robber to Scholar: The Knoxville Dropout Fighting to Change How We See Addiction' *The Guardian* (4 September 2025) <https://www.theguardian.com/news/2025/sep/04/bank-robber-scholar-knoxville-change-addiction> accessed 9 November 2025.

[4] Norman Kerr, *Inebriety: Its Etiology, Pathology, Treatment and Jurisprudence* (3rd edn, HK Lewis 1894) 15.

[5] 'Historical Perspectives and the Moral Model' in Pamela S Lassiter and John R Culbreth (eds), *Theory and Practice of Addiction Counseling* (SAGE Publications 2017).

[6] Owen Flanagan, 'Willing Addicts? Drinkers, Dandies, Druggies, and Other Dionysians' in Nick Heather and Gabriel Segal (eds), *Addiction and Choice: Rethinking the Relationship* (Oxford

personhood behind the pathology, obscuring the human capacity to learn new behaviours.[7]

The philosophical tension between choice and disease highlights a critical structural problem for jurisprudence. Criminal law fundamentally relies on concepts of voluntarism and *mens rea* to impose a punishment.[8] If addiction were to be recognised as truly involuntary in nature as a chronic disease entirely external to the will, the State's entire apparatus of mandatory minimum sentences, retributive justice and penal sanctions would lose its moral and legal legitimacy. Therefore, the sustained use of stigmatising and moralistic language in law functions rhetorically to sustain the notion of fault and choice, serving as a necessary precursor to justify the imposition of punishment.[9]

This creates a paradox when contrasted with commercial interests. While the legal interpretation of the term "addict" is morally abhorrent, and defines the user as a criminal and marginalised individual, the cultural context of the word is used to describe a consumer who is passionate, devoted or a fan.[10] The word "addiction" has also been appropriated, commodified and trivialised in the marketplace. It is commonly used in marketing campaigns advertising hot sauce, biking gear, potato chips and other paraphernalia.[11] While both approaches exploit the condition, marketing exploits the idea of addiction. The law holds the power to impose structural violence upon the individual through political disenfranchisement, economic (exclusion from employment and licenses), and social barriers.

## III. The Language Employed in the Moral Defect of Addiction

The law sustains scientific inaccuracies through the weaponisation of language. Furthermore, the legalese of addiction is biased. It actively shapes policy outcomes and public perceptions. The terminology makes it difficult to secure adequate funding for public health initiatives.[12] When the State does not shy away from using pejorative terms such as junkies or crackheads,[13] it contributes to a

University Press 2016) 66.

7 ibid.

8 Stephen J Morse, 'Addiction, Science and Criminal Responsibility' in Nita Farahany (ed), *The Impact of Behavioral Sciences on Criminal Law* (Oxford University Press 2009).

9 H L A Hart, *Punishment and Responsibility: Essays in the Philosophy of Law* (2nd edn, OUP 2008) 1–28.

10 [10] Pringles, '1996 Pringles "Once You Pop, You Can't Stop" TV Commercial' (12 November 2019) <https://www.youtube.com/watch?v=iI5tSbPwGD8> accessed 8 January 2026.

11 ibid.

12 Global Commission on Drug Policy, 'Beyond Punishment: From Criminal Justice Responses to Drug Policy Reform – Thematic Report Launch' (*YouTube*, 19 December 2024) <https://www.youtube.com/watch?v=rkoZicVWLxg> accessed 20 November 2025.

13 G A Marlatt, 'Harm Reduction: Come as You Are' (1996) 21(6) Addictive Behaviors 779.

profound sense of depersonalisation by describing individuals solely through the lens of their addiction. Depersonalisation is further compounded by the prevailing collectivist culture and emphasis on reputation, or *izzat* in South Asian Culture.[14] Alongside being personally disgraced, the addicted individual becomes the source of their family's social exclusion. Hinduism, Islam, Sikhism and other faiths place a high value on discipline, purity and self-control.[15]

The concept of stigma itself is defined as the attribution of negative views to people whose characteristics or behaviours are deemed inferior to societal norms. The legal adoption of such terminology echoes historical practices, such as labelling people with mental illness, such as "lunatics",[16] or applying explicit moral judgements to individuals affected by HIV, often referring to them as having "gay related immune deficiency." Research indicates that the negative views and stigmas directed towards individuals with substance use disorders are often greater than those observed towards people with physical or psychiatric disabilities.[17]

In light of this harm, sustained efforts have been made to mandate linguistic reform across the legal and administrative sectors. Advocacy organisations and public health bodies propose shifting to a people-first language.[18] Examples of this include using terms such as "person with a substance use disorder" instead of the inherently loaded terms "addict" and "abuser". Legislators in the United States are systematically replacing archaic and negative statutory language to promote dignity, respect and greater access to care, treating addictions as chronic but treatable conditions.[19]

## A. The Securitised State and the Criminal Dimension of Social Justice

Judicial and statutory language also routinely frames drug use as an existential threat to the collective State. Indian judgements have frequently described drug use as a "social malady" alongside explicitly stating that addictions "eat into the vitals of society". The courts believe that addictions pose a grave threat to the future of a country.[20]

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[14] Veena Das, *Critical Events: An Anthropological Perspective on Contemporary India* (Oxford University Press 1995).

[15] ibid

[16] Jonathan M Metzl, *The Protest Psychosis: How Schizophrenia Became a Black Disease* (Beacon Press 2009) 25–40.

[17] Patrick W Corrigan and others, 'The Public Stigma of Mental Illness and Drug Addiction: Findings from a Stratified Random Sample' (2009) 9(2) Journal of Social Work 139.

[18] National Institute on Drug Abuse, 'Words Matter — Terms to Use and Avoid When Talking About Addiction' (*NIDA*, 29 November 2021) <https://nida.nih.gov/nidamed-medical-health-professionals/health-professions-education/words-matter-terms-to-use-avoid-when-talking-about-addiction> accessed 9 November 2025.

[19] Office of National Drug Control Policy, *National Drug Control Strategy* (Executive Office of the President 2022) 73.

[20] *State of Punjab v Balbir Singh* (1994) 3 SCC 299, [312] (India).

This pervasive, fear-based securitised rhetoric, which links drug-related activities to terrorism and the underworld, further aids the justification behind disproportionate penal measures.[21] This rhetoric was deployed to justify the introduction of the Narcotic Drugs and Psychotropic Substances Act, 1985, which specifies a mandatory minimum imprisonment and fine to effectively control drug abuse.[22] Judicial opinions also reveal a deep-seated, internalised moral bias through using non-clinical language.[23]

By escalating addiction into an existential security threat, the State successfully transforms a complex public health system problem into a national security emergency. This transformation allows the State to deploy its most restrictive tools against a medically vulnerable population. Thus, institutionalised stigma functions as the central mechanism that converts individuals struggling with medical conditions into targets of penal state force.[24]

## IV. A Jurisprudential Critique of Addiction and Distributive Justice

The application of high-order justice theories reveals that the stigmatising legal framework surrounding addiction constitutes a structural and profound failure of distributive justice. These theories refer to the philosophical frameworks that go beyond procedural fairness to evaluate how resources, rights and social protections are distributed in society. Examples of these include the Rawlsian theory of justice and Amartya Sen's capability approach. Applying these theories to substance use disorders looks beyond the application of the law being fair in procedure. Rather, they evaluate if the overall system treats addicted persons as equally entitled to social, economic and health resources.

### A. Rawlsian Justice and the Least Advantaged

John Rawls's theory of Justice as Fairness offers a critique of contemporary addiction law.[25] He emphasises that justice must be concerned with the societal structure and the distribution of rights and resources to ensure fairness and cooperation.[26] Rawls's first principle mandates equal and maximum feasible liberty for all citizens. Punitive policies, such as mandatory minimum sentences based on a chronic and relapsing condition such as substance use disorder, fundamentally and disproportionately restrict the liberty of the addicted population, implying

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[21] Narcotic Drugs and Psychotropic Substances Act 1985, Statement of Objects and Reasons.
[22] Narcotic Drugs and Psychotropic Substances Act 1985, No 61 of 1985, ss 15-25 (India).
[23] *Union of India v Ram Samujh* (1999) 9 SCC 429.
[24] Barry Buzan, Ole Wæver and Jaap de Wilde, *Security: A New Framework for Analysis* (Lynne Rienner Publishers 1998).
[25] John Rawls, *A Theory of Justice* (Harvard Univ Press 1971) 53–54.
[26] John Rawls, *Political Liberalism* (Columbia Univ Press 1993) 5–11.

they are considered less worthy of core political and personal freedom as opposed to their non-addicted counterparts.[27]

The more decisive critique emerges through the application of the difference principle. The difference principles require that social and economic inequalities must be arranged to the greatest benefit of the least advantaged. The addicted population, frequently marginalised by social stigma, unemployment, lack of housing, and poor access to healthcare, clearly falls into the category of the "least advantaged" in terms of health, socio-economic status and legal standing.

Current legal policy consistently fails the difference principle and operates in inversion of it.[28] Rather than prioritising public resources to maximise the welfare of the population that is the worst off, the system channels massive amounts of resources towards judicial control and enforcement measures.[29] If the State were to operate in favour of the difference principle, these resources would be allocated towards evidence-based rehabilitation centres and comprehensive social support. This structural inversion of the difference principle demonstrates a fundamental contradiction with the aims of a just society, as it punishes the vulnerable instead of addressing the systemic causes of their vulnerability.

## B. Addiction Through Amartya Sen's Capability Approach

Amartya Sen's Capability Approach provides a formative framework for evaluating well-being based on an individual's freedom or capability to achieve valuable beings and doings (functionings) that they have reason to value, such as being in good health, having social relationships or exercising practical reason.[30] In this framework, addiction is fundamentally understood as a critical 'capabilities' failure, severely limiting a person's ability to maintain physical and mental health, exercise practical reason, and participate fully in society.

The chronic and compulsive nature of addiction severely undermines core agency and practical reason, which are prerequisites for achieving valued functionings. The defining symptom of addiction, which is the experience of intrusive thoughts to engage in behaviours contrary to a person's overall goals, directly challenges the legal assumption of full volitional agency.[31] The condition frequently arises from societal and environmental failures to inoculate individuals with immunity from internal and external vulnerabilities to chemical dependency, underscoring the collective role in both prevention and recovery.

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[27] National Institute on Drug Abuse, *Drugs, Brains, and Behavior: The Science of Addiction* (NIH Pub No 20-DA-5605, 2020).

[28] Michael J Sandel, *Liberalism and the Limits of Justice* (2nd edn, Cambridge University Press 1998).

[29] Rawls (n 25).

[30] Amartya Sen, *Development as Freedom* (OUP 1999) 74–77.

[31] Amartya Sen, *Commodities and Capabilities* (North-Holland 1985) 13–15.

The lack of affordable rehabilitation and social support services translates to a failure of conversion factors, which are the necessary societal inputs that enable marginalised individuals to translate their internal potential into genuine capability expansion. By denying these resources, the State absolves itself of responsibility and places the full moral and economic burden of non-recovery onto the individual.[32] The law assumes that the individual has full agency for the initial act to justify punishment (moral model), but simultaneously refuses to provide the collective resources necessary to restore agency for sustained recovery (capability approach).[33] This is a contradictory jurisprudential stance that ensures the legal system is primarily punishing a socially determined, chronic medical condition.

## C. The Nozickian Libertarian Critique of Stigmatising Language

The Nozickian libertarian analysis presents a strictly deontological challenge to all forms of state intervention in individual substance use, standing in sharp contrast to the welfarist, outcome-oriented concerns central to the capability approach.[34] While the capability approach focuses on restoring the positive freedom of the individual by addressing failures in societal provisioning, the Nozickian perspective focuses entirely on the preservation of negative rights, which is the freedom from interference. The core contention is that any language of a conceptual framework, moralistic or medical, that permits state coercion regarding the choice of personal ingestion constitutes an illegitimate violation of the individual's absolute right of self-ownership.[35]

### 1. *The Kantian Foundation of Individuals as Inviolable Ends*

Nozick grounds his political theory in the eighteenth-century philosopher Immanuel Kant's requirement that individuals must be treated only as ends in themselves, and never merely as means to achieve the ends of others. This principle is institutionalised in Nozick's structure through moral side constraints, which strictly forbid certain actions, regardless of the beneficial consequences they might yield.[36] These side constraints define the boundaries of permissible state action, placing the protection of negative rights above all else. Among these rights, the right to bodily integrity is considered paramount.

The fundamental priority assigned to deontology over consequentialism means that the framework entirely dismisses public health or societal well-being justifications often cited in drug policy. For example, policy advocates may argue

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[32] Nussbaum, 'Creating Capabilities: The Human Development Approach and its Implementation' (2009) 24 Hypatia 211.

[33] Amartya (n 30).

[34] Robert Nozick, *Anarchy, State, and Utopia* (Basic Books 1974).

[35] ibid.

[36] Nozick (n 34).

that drug prohibition is necessary to reduce violence, productivity loss, or generalised crime. Such consequentialist reasoning, however, necessarily requires treating the individual user's body as a means to achieve a collective social goal, such as curing a "sick society". This utilitarian approach is categorically ruled out by the Kantian imperative that rights are non-negotiable trumps; even if prohibition could demonstrably save thousands of lives, the method of coercive violation of self-ownership is fundamentally immoral.[37]

## V. The Human Body as a Site of Injustice – The Phenomenology of Embodied Injustice

The legal treatment of addiction extends beyond policy failures. It becomes a physical reality inscribed upon the individual body. The legal system often regards the addicted person as a "diseased body" that "needs correction". This perception neglects the structural determinants of substance use disorders, such as the observation that addictions are frequently concentrated in geography, which reflects the entrenched systemic disadvantages.[38]

This situation matches the definition of structural violence. Social arrangements, often embedded within legal or political systems, that cause injury to people are typically responsible for perpetuating the inequalities.[39] Criminalisation policies contribute directly to this violence.

The conceptualisation of addiction as an "embodied injustice" means that the trauma, deprivation, and social exclusion resulting from prohibitionist policies and moralistic stigma are physically manifested and sustained within the individual. [40] The systemic failure to provide collective support leading to continued addiction is the starkest proof of this injustice.

## VI. The Judiciary's Treatment of Liquor Abuse and Gambling

While the legal system's traditional punitive approach to alcohol abuse sets a precedent rooted in a moralistic bias, the biases percolate into other compulsive behaviours, stigmatising and regulating them in the process. The courts treat compulsive gambling behaviour as a sign of weak character and unreliability, similar to the perception of a drug user. The element of "choice" in consuming drugs or partaking in gambling allows for it to be viewed as the failure of one's will, rather than a neurological disorder.

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[37] Norman E Bowie, 'Taking Rights Seriously by Ronald Dworkin' (1977) 26(4) Catholic University Law Review 912.

[38] Katherine J Karriker-Jaffe, 'Neighborhood Socioeconomic Status and Substance Use by U.S. Adults' (2013) 133(1) Drug and Alcohol Dependence 212.

[39] Johan Galtung, 'Violence, Peace, and Peace Research' (1969) 6 J Peace Rsch 167, 171–73.

[40] Mary Crossley, *Embodied Injustice: Race, Disability, and the Health Imperative* (CUP 2021) 10–15.

## A. Chronic Addiction v. Voluntary Intoxication in Criminal Law

In criminal jurisprudence, intoxication is not a defence to a crime. The law asserts that culpability derives from the prima facie voluntary act of consuming a substance, negating the concept of addiction as a mitigating disease.[41] However, in many jurisdictions, drug and alcohol intoxication can be used to raise a reasonable doubt for specific offences. The law's moralistic barricade, however, leads courts to narrowly construe defences involving voluntary intoxication, particularly when considering individuals predisposed to addiction.[42] This can be observed when chronic substance abuse is frequently treated as an aggravating factor during sentencing instead of a health condition.[43] The core legal principle asserts that culpability derives from the initial voluntary act of consuming the substance, thereby imposing liability for all subsequent, often non-volitional, actions. This approach reflects the enduring influence of the "moral wrong theory" of mistake law in contemporary legal approaches, suggesting that the initial decision to consume was morally reckless per se. In many cases, particularly in drunk driving, the focus is placed on the State of mind of the individual when taking the first drink, not when the crime was committed.

The law's reluctance to reconcile neuroscientific evidence of impaired practical reason with traditional criminal culpability standards represents a profound philosophical and practical failure, insisting on a fiction of full choice to maintain the punitive legal structure.[44]

Ideally, the law must recognise addiction as a condition similar to insanity that diminishes an individual's *mens rea* for a crime. A legal paradigm shifting the focus from choice to empathy in the form of understanding disease-driven compulsion would be more forgiving, allowing for a greater possibility of reform.

## B. Gambling as Moral Turpitude and Res Extra Commercium

Gambling is described as vile due to its moral turpitude.[45] This moral condemnation is given legal force by denying gambling activities protection under constitutional provisions guaranteeing the freedom of legitimate trade or commerce by positioning gambling as *res extra commercium*.[46] Through this, it is

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41 Joshua Dressler, *Understanding Criminal Law* (9th edn, Matthew Bender 2023) 245–50.

42 American Law Institute, *Model Penal Code: Sentencing* (Proposed Final Draft 2017) 7–8.

43 *Bhagwan Tukaram Dange v State of Maharashtra* (2014 4 SCC 270) : AIR 2014 SCW 1749.

44 Hart (n 9) 15.

45 *K R Lakshmanan v State of T.N.* (1996) 2 SCC 226 : (1997) 223 ITR 601 : (1996) 86 Comp Cas 66, 237–38 (India).

46 *State of Bombay v R M D Chamarbaugwala* 1957 SCC OnLine SC 12 : AIR 1957 SC 699, 708–09 (India).

segregated from other commercial activities, and the law reinforces its status as a morally inferior vice.

### 2. *Stigmas Through Copy-Pasting Language*

A mechanism of stigmatisation in gambling jurisprudence is the explicit, rhetorical analogy drawn to drug addiction. In landmark judgments such *as B.R. Enterprises v. State of U.P. and Ors.*, the court explicitly compares the compulsive drive for lotteries and the State of being a drug addict. The court noted that losses in lotteries increase the "craze with intoxicating hope," drawing the individual "repeatedly back into the circle of lottery like drug addicts".

This rhetorical manoeuvre is the mechanism of stigma transfer. The court consciously utilises the extreme, politically and criminally potent stigma associated with the "drug addict", a figure already established as a moral and security threat to justify the social condemnation and regulation of compulsive gambling.[47] This jurisprudence of moral borrowing uses a culturally accepted moral repugnance to delegitimise the economic and social engagement tied to the activity, firmly anchoring gambling disorder in the moral failing paradigm.

## VII. Conclusion

The addict within Indian jurisprudence is not a subject of medical concern but a construct of moralistic architecture. By entrenching the moral model and securitizing substance use, the law transforms a neurobiological condition into a site of penal control. What the Indian legal system struggles with is not just a policy failure, but a profound violation of justice that percolates into the lives of those dealing with addiction. The state has historically inverted the difference principle, prioritizing the welfare of the least advantaged rather than punishing them. The refusal to provide rehabilitative conversion traps individuals in a cycle of capability deprivation. Simultaneously. The current prohibitionist regime constitutes an illegitimate violation of self-ownership. The State must treat individuals as ends, not means. Furthermore, allowing courts to "copy-paste" the pathology of the drug user onto other behaviors to justify regulation further perpetuates harm. The proposed shift toward people-first language and administrative discourse, therefore, is not merely semantic hygiene. Rather, it is the necessary precursor to emancipatory justice. By dismantling the linguistic structures that dehumanize the subject, the legal system can begin to transition from a regime of coercive control to one of restorative dignity, finally recognizing the person behind the pathology.

[47] Erving Goffman, Stigma: Notes on the Management of Spoiled Identity (Prentice-Hall 1963) 100.