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A CRITICAL ANALYSIS OF LEGAL FRAMEWORKS AGAINST DRUGS TRAFFICKING IN IN INDIA

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Introduction

Passed in the wake of increasing drug abuse, organized drug trafficking across the country and in the world and the growing responsibilities before the international community, the Narcotic Drugs and Psychotropic Substances Act, 1985¹ was designed to give a fresh look to the drug trafficking problem in India by replacing the multitude of ad hoc colonial laws with a comprehensive law that would tackle the national as well as transnational aspect of the drug problem.

No analysis of the provisions of the Act would be complete without taking note of the evolution from the opium laws of the 19th century to the sweeping changes made to the Act in 2014. This chapter, therefore, addresses three aspects: First, it looks at the evolution of narcotic legislation in India; Second, it discusses the structural framework of the NDPS Act and its salient features; and third, it examines the procedural aspects of investigation, trial and disposal of NDPS cases with the help of empirical data derived from the official records.

Enacted against the backdrop of escalating drug abuse, transnational trafficking networks, and mounting international obligations, the statute sought to replace a multiplicity of scattered colonial era enactments with a single, comprehensive legislation capable of addressing the menace of drug trafficking in both its domestic and international dimensions.

¹ Narcotic Drugs and Psychotropic Substances Act, 1985 (Act No. 61 of 1985), §1, Official Gazette of India, November 14, 1985

An understanding of the Act's provisions is incomplete without situating them within the broader arc of India's legislative history on narcotic control, from the opium statutes of the nineteenth century to the far-reaching amendments of 2014². This chapter accordingly undertakes a threefold inquiry: first, it traces the historical evolution of narcotic legislation in India second, it examines the structural architecture and key operative provisions of the NDPS Act and third, it analyses the procedural dynamics that govern investigation, trial, and disposal of NDPS cases.

Historical Evolution of Narcotic Legislation in India

Colonial Phase

Indian relations with narcotics law are not a new phenomenon, but come almost a century before Independence. The British colonial administration was highly aware of the revenue possibilities of the opium trade, especially in exporting Indian opium to China and established a series of laws, none of them truly public health measures, that were used to control the production, sale, possession, and cultivation of opium under a licensing system; the Opium Act, 1857³ and Opium Act 1878⁴ both dealt with opium and the first consolidated act that covered opium, coca leaves and cannabis was the Dangerous Drugs Act, 1930.⁵

The colonial system was essentially extractive, with the aim of maximizing state revenues from the legitimate trade in poppy opiates, and of punishing any competing trade that was not sanctioned. Legislative response to the social costs of addiction for Indian consumers was very limited. This orientation would continue in later post-independence years, albeit in different forms, as people did not want to be too radical in the breaking up of the inherited institutions

The Opium Acts of 1857 and 1878 introduced a licensing policy which, in effect, was a

² The Narcotic Drugs and Psychotropic Substances (Amendment) Act, No. 16 of 2014,

³ The Opium Act, No. 13 of 1857, India Code (1857)

⁴ The Opium Act, No. 1 of 1878, India Code (1878)

⁵ The Dangerous Drugs Act, No. 2 of 1930,

monopoly policy. The cultivation of opium yielding poppies was allowed to take place only within certain limits and premises and by licensed cultivators under Section 4 of the Opium Act, 1878. It produced considerable revenue for the colonial authorities, and established an infrastructure of addiction which would continue to be in place long after independence. The Acts did not differentiate between medicine and pleasure, and were made from the point of view of maximum revenue.

The Dangerous Drugs Act, 1930 was a small step towards a new idea, as it brought together several colonial laws under one roof. It retained the extractive tradition of its forebears, however. The Act allowed the planting of opium poppies in certain areas and penalties for planting in unauthorized areas.

Although this was a wider ranging Act, it still failed to take into account the developing issues. By later standards, its penalties were light, its enforcement system was scattered among provincial governments and it had no provisions for synthetic narcotics or for the new problem of heroin trafficking.

Post-Independence Period

On Independence when India gained independence she was left with the colonial laws and treaties she had inherited as part of the new international drug control system. The India's accession to Single Convention on Narcotic Drugs, 1961⁶ (amended by the 1972 Protocol), Convention on Psychotropic Substances, 1971⁷ and finally the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988⁸, began to put both normative pressures and pressures upon the existing Indian law, to modernize it.

The accession of India to Single Convention on Narcotic Drugs, 1961 (amended in 1972), Convention on Psychotropic Substances, 1971 and later to the United Nations

⁶ Single Convention on Narcotic Drugs, 1961, available at <https://www.unodc.org/unodc/en/treaties/singleconvention.html>. India ratified the Convention on December 16, 1972, with the 1972 Protocol becoming effective on November 1, 1977.

⁷ Convention on Psychotropic Substances, 1971,

⁸ United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988,

Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, put both pressures and normative pressures upon the existing Indian law to modernize it.

Under the Single Convention on Narcotic Drugs, 1961 the States Parties agreed to establish judicial systems which would enable them to prevent and punish drug trafficking. The Convention created a three-level classification of narcotic drugs, and required countries to control and monitor all activity involving narcotic drugs. In 1972, the Convention was extended by the Protocol to include manufactured drugs.

The Convention on Psychotropic Substances, 1971, expanded on the international control system to synthetic drugs and psychotropic compounds. This was because other manufactured drugs, such as amphetamines, barbiturates, and other drugs not listed in the 1961 Convention were emerging as a problem. In 1971 four lists of psychotropic substances were created in the Convention, with different levels of control according to the level of perceived risk of abuse and the degree of medical utility. To enable India to sign the Convention of 1971, the Dangerous Drugs Act, 1930, or a new law had to be amended/superseded to make Psychotropic Substances fit into the legislation.

Attitudes by the official changed qualitatively in the 1970's. The Report of the Committee on Drug Abuse (1976) popularly known as the Chopra Committee Report⁹, after the Committee's Chairman, Dr. B.P. Chopra, brought into light the rising threat of heroin addiction, the infiltration of the narcotics trafficking network through the Afghanistan – Pakistan – India route and the failure of the existing law and order measures.

The ideas that would go on to form the NDPS Act were a large part of the intellectual structure given to them by the Committee's recommendations.

The Chopra Committee recommended for:

- a centralized law to replace the various provincial and colonial era laws.

⁹ Ministry of Home Affairs, Government of India, Report of the Committee on Drug Abuse (1976) [Chopra Committee Report]

- more severe punishment for trafficking offences, especially those involving large numbers of trafficked women.
- the establishment of special police units.

The key areas were dedicated to narcotics control, and integration of India's drug control mechanism with international treaties and conventions. These recommendations were part of a wider trend of acknowledging the transgenerational nature of drug trafficking, and the need for an equally complex legal and institutional response.

Enactment of the NDPS Act

The NDPS Act came into force on 14 November 1985¹⁰ and became effective on 14 May 1986. The Opium Acts, the Dangerous Drugs Act and the various State laws consequent upon these laws were found to be 'inadequate to meet the challenge of the drug menace' and this was also admitted in the Statement of Object of Reasons.¹¹ The Act was supposed to address India's treaty commitments; impose severe punishment and empower multiple agencies ensuring that there is no loophole in the anti-trafficking mechanism.

The Statement of Objects and Reasons read that the new Act would:

1. Consolidate and replace all existing laws relating to narcotic drugs
2. impose stringent measures in line with the seriousness of drug trafficking
3. facilitate international cooperation in the control of drug trafficking
4. Create machinery to monitor and control the use of precursor drugs in the production of illicit drugs.
5. Provide for the forfeiture of property in cases of drug trafficking

The Act replaced and amalgamated the Dangerous Drugs Act, 1930¹² and other relevant Acts. It encompassed not only traditional narcotics like opium, heroin and cannabis, but also psychotropic drugs as listed in the 1971 UN Convention¹³ and – in successive amendments – synthetic and

¹⁰ Narcotic Drugs and Psychotropic Substances Act, 1985, §1 (Statement of Commencement), Official Gazette of India, November 14, 1985

¹¹ Statement of Objects and Reasons, NDPS Bill, 1985, Official Gazette of India, October 1985.

¹² Dangerous Drugs Act, 1930, Repeal Clause (implied in Section 1 of the NDPS Act). The NDPS Act replaced all prior narcotic drug legislation upon commencement

¹³ Convention on Psychotropic Substances, opened for signature Feb. 21, 1971, 32 U.S.T. 543, 1019 U.N.T.S. 175.

designer drugs as well. The statute gave concurrent powers of enforcement to Central Government (through the Narcotics Control Bureau), Directorate of Revenue Intelligence, Customs and State Police, thus establishing a layered enforcement structure.

The Narcotics Control Bureau, a statutory organization under the provisions of the Act was directed to coordinate the drug control operation at the national level. The NCB¹⁴ had powers to register the cases, investigate trafficking networks, keep intelligence records and coordinate with international agencies for drug enforcement. State Police had the traditional jurisdiction to investigate drug cases in their areas and as a consequence a federal enforcement structure was created that mirrored India's constitution.

Major Amendments

The NDPS Act has been substantially amended three times, each time in line with the changes in the understanding of drug trafficking and international best practices of narcotics control.

The NDPS (Amendment) Act, 1989 provided for the imposition of death penalty for specific cases of re-offending with possession of considerable number of drugs and amended the bail provision in Section 37¹⁵. This amendment resulting from the notion that the first sentence was not sufficiently dissuasive.

The death penalty was available if a person was convicted a second or subsequent time for narcotics offences that involved commercial quantities, in addition to or instead of imprisonment and fine, the court was empowered to sentence the person to death in its discretion.

The 1988 Vienna Convention¹⁶ has influenced the NDPS (Amendment) Act, 2001¹⁷, which added Section 27A which criminalizes the financing of illicit traffic, and Sections 68A to 68V¹⁸ which set out an elaborate forfeiture regime for property that has been used in drug trafficking. Quite

¹⁴ Narcotic Drugs and Psychotropic Substances Act, 1985, § 53 granting NCB investigative and coordination powers).

¹⁵ Narcotic Drugs and Psychotropic Substances Act, 1985, § 37, amended by Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1989, § 37

¹⁶ United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, opened for signature Dec. 20, 1988,

¹⁷ Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2001, § 27A

¹⁸ Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2001, §§ 68A -68V

apart from the financing of illicit trafficking, Section 27A imposes a new offence of financing trafficking, punishable by rigorous imprisonment for not less than 10 years but not more than 20 years.

The forfeiture provisions created a complete drug trafficking property attachment and forfeiture regime. This marked a considerable expansion of the scope of the Act's application to the monetary aspects of drug trafficking, which underpins the activities of trafficking groups, such as laundering the proceeds of the crime and amassing profits. The 2001 Amendment also added the term "property derived or obtained, as a result of criminal activity" which is related to illicit traffic and is referred to as "proceeds of crime.

The NDPS (Amendment) Act, 2014¹⁹ made the most wide-ranging amendment by replacing the Second Schedule with a new one, introducing a new graduated sentencing structure, which differentiated between small, intermediate and commercial quantities of each drug and adding a new provision to allow access to essential narcotic drugs for legitimate medical or scientific purposes. The amendment has been seen as a partial remedy for the vagueness of the previous wording of the Act.

There has been a change in the classification of drug quantities in the 2014 Amendment, whereby they are divided into three categories: The 2014 Amendment changed the way drug quantities are classified:

- Small Quantity: Penalty under Sections 27-29 of the Act is light, and applies to small amounts for personal use.
- Intermediate Quantity: Quantities above the small threshold but not as great as the commercial threshold, typically indicative of "mid-level trafficking" or "bulk personal use.
- Commercial Quantity: large quantities - the highest penalties for commercial trafficking.
- The Second Schedule enumerated such thresholds for each of the narcotic drugs and psychotropic drugs enumerated in the Second Schedule of the Act. The amount of heroine²⁰ for example, was set at 1 gram and the amount of cannabis set at 20 grams. These thresholds are based on the enforcement experience and international comparison.

¹⁹ Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2014

²⁰ Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2014, sched. 2

The Amendment of 2014 also introduced Section 27B and 27C²¹ for the rehabilitation and de-addiction of drug dependent persons who have voluntarily availed of a rehabilitation center.

Under Section 27B, the State governments have the power to set up de-addiction centers and counselling centers. Section 27C stated that if any person disclosing his addiction voluntarily to any officer authorized for the purpose of his arrest, and his voluntary desire to go through the prescribed de-addiction Programme, would not be prosecuted under Sections 20, 21, 22 and 25 of the Act.²²

Structural Architecture of the NDPS Act

Definitional Framework

The Act's definitional provisions in Section 2 have an important normative function – they draw the line of what constitutes a crime. The definitions do not simply refer to the technical aspects of the crime; they establish the domain of criminal responsibility and thus the range of state power.

Section 2(viii-a)²³ uses a broad definition of 'illicit traffic' which includes: (1) cultivation, manufacture, production, possession, sale, purchase, transportation, warehousing, use, consumption, import/export and financing of any of the above with respect to any narcotic drugs or psychotropic substances. This definition is chosen to be as general as possible to include the whole drug trafficking value chain, from cultivation to last consumption. It goes beyond the idea of trafficking, to include "financing", as defined in the 2001 Amendment. The term "use" and "consumption" in the definition of illicit traffic also suggest that possessing a narcotic for personal use could be defined as illicit traffic, and that the definition of illicit traffic is not limited to trafficking for the purpose of supplying to others, there are reduced penalty provisions for personal consumption offences in Section 27.

The phrase 'small quantity'²⁴ 'commercial quantity' introduced and calibrated by the Second Schedule, has led to a considerable volume of judicial interpretation. Courts have consistently held

²¹ Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2014, §§ 27B-27C

²² Narcotic Drugs and Psychotropic Substances Act, 1985, §§ 20, 21, 22, 25

²³ NDPS Act, 1985, ss. 2(xiv), 2(xxiii)

²⁴ Law Commission of India, 277th Report: "Implementation of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2014

that the quantum involved should be determined based on the pure drug content and not the total weight of the seized mixture or preparation as is evident from a series of Supreme Court decisions in *Rajendra Prasad v. State of Uttar Pradesh and others*.²⁵

In *U.P. (1979)*, the Supreme Court said that the purity of a drug must be considered when determining whether it is seized in a "commercial quantity. The Court found that the amount of the heroin seizure does not necessarily impose strict penalties since the weight must be reduced by any adulterants or dilutions.

This principle is particularly significant because of the high degree of adulteration of illicit drugs. Heroin smuggled into Indian markets is usually cut with other drugs, such as chalk, talcum powder, starch, or other drugs of the same class. In *State of Punjab v. Baldev Singh (1999)*²⁶ SC observed that the analysis report of the substance seized must include details of its chemical composition and the purity percentage must be considered while fixing the punishment.

Principal offences and Penalties

Sections 15-25 establish the framework of the main offences related to cultivation, production, manufacture, possession, sale, purchase, movement, import, export and use of narcotics and psychotropic substances.

Section 15: Poppy Straw²⁷

Section 15 deals with offences against the opium poppy (poppy straw), that is, a part of the plant that remains after opium has been extracted. In the case of small quantity, it prescribes rigorous imprisonment not less than six months but which may extend to six months with a fine of up to one lakh rupees, while in the case of commercial quantity, it prescribes rigorous imprisonment not less than ten years but which may extend to twenty years with fines not less than one lakh rupees.

Section 20: Cannabis²⁸

Offences against cannabis (which includes cannabis sativa L., as well as hashish, charas and bhang, which is a preparation in an aqueous form). For small quantities, it prescribes rigorous

²⁵ *Rajendra Prasad v. State of U.P.*, (1979) 4 SCC 258.

²⁶ *State of Punjab v. Baldev Singh*, (1999) 5 SCC 705.

²⁷ *Narcotic Drugs and Psychotropic Substances Act, 1985*, § 15 (India).

²⁸ *Id.* § 20.

imprisonment for up to 6 months and for commercial quantity, rigorous imprisonment for up to 20 years with a fine of up to two lakh rupees.

In India, cannabis is the most widely grown narcotic crop, grown in Uttarakhand, Himachal Pradesh, parts of the Northeast and in small amounts throughout India. The fact that the small quantity is differentiated from the commercial quantity acknowledges that the use of cannabis is relatively high in Indian society, and that many people may be found with a quantity of cannabis that is not enough to be considered trafficking; but is enough for personal or social consumption.

Section 21: Manufactured Drugs²⁹

Section 21 is the most specific of the set of offences, and creates a three-part sentencing structure: Small Quantity: rigorous imprisonment for a period of not less than six months but not exceeding one year and fine not exceeding ten thousand rupees.

Intermediate Quantity: rigorous imprisonment for a period not less than one year and till ten years with a fine of not less than fifty thousand rupees or one lakh rupees. Commercial quantity: imprisonment for at least ten years, extendable to twenty years and fine up to two lakh rupees. Manufactured drugs include heroin (diacetylmorphine), morphine, cocaine, and synthetic drugs like amphetamines and MDMA. The tripartite structure acknowledges that intermediate quantity trafficking is a separate form of trafficking, neither casual nor commercial. This provision had a significant impact on the sentencing of traffickers, particularly as judges apply the intermediate quantity framework to distinguish between different traffickers.

Section 22: Psychotropic Substances³⁰

Section 22 focuses upon offences relating to psychotropic substances, such as benzodiazepines, barbiturates, amphetamines and other synthetic substances affecting the central nervous system. Rigorous imprisonment of not less than ten years and which may be extended to twenty years and fine of up to two lakh rupees is the stipulation for commercial quantities in the provision.

Section 27: Personal Consumption³¹

²⁹ Id. § 21.

³⁰ Narcotic Drugs and Psychotropic Substances Act, 1985, § 22 (India).

³¹ Narcotic Drugs and Psychotropic Substances Act, 1985, § 27 (India).

Section 27 establishes a special regime for personal consumption, which it partly acknowledges the principle that the addict/consumer is in a different moral situation, from the trafficker. Any person who, without authority, uses a narcotic drug or psychotropic substance shall be punishable upon conviction by rigorous imprisonment for not less than one year or by fine not less than twenty thousand rupees or by both imprisonment and fine for a second or subsequent offence; and by imprisonment for a term not less than two years or by a fine not less than fifty thousand rupees or both imprisonment and fine.

Importantly, the section does not refer to "rigorous imprisonment" but "simple imprisonment. Simple imprisonment is a less severe type of imprisonment in criminal law in India, meaning that the person is imprisoned in an open prison or semi-open prison; rigorous imprisonment is a more severe form, involving hard labor and tight confinement. The conversion of jail sentences to simple imprisonment is a sign of the court's awareness of the rehabilitative potential of drug users instead of drug traffickers.

The financing of illicit traffic is covered in Section 27A.³²

Section 27A deals with the financial structure of trafficking in drugs. It imposes rigorous imprisonment for up to 20 years and a fine up to 2 Lacs on anyone who knowingly aids, abets, promotes or finances any of the activities mentioned in the definition of illicit traffic.

Table 1: Offence and Penalty Matrix (Post-2014 Amendment)

Section	Subject Matter	Quantity	Maximum Sentence / Fine	Imprisonment Type
S. 15	Poppy straw	Small qty	6 months / ₹10,000	Rigorous
S. 15	Poppy straw	Commercial qty	10–20 yrs / ₹1–2 lakh	Rigorous
S. 20	Cannabis	Small qty	6 months / ₹10,000	Rigorous

³² Narcotic Drugs and Psychotropic Substances Act, 1985, § 27A (India).

S. 20	Cannabis	Commercial qty	10–20 yrs / ₹1–2 lakh	Rigorous
S. 21	Manufactured drugs	Small qty	1 yr / ₹10,000	Rigorous
S. 21	Manufactured drugs	Intermediate qty	1–10 yrs / ₹50,000–₹1 lakh	Rigorous
S. 21	Manufactured drugs	Commercial qty	10–20 yrs / ₹1–2 lakh	Rigorous
S. 22	Psychotropic substances	Commercial qty	10–20 yrs / ₹1–2 lakh	Rigorous
S. 27	Personal consumption	Any	Max 1 yr or fine or both	May be simple
S. 27A	Financing illicit traffic	—	10–20 yrs / ₹1–2 lakh	Rigorous
S. 31	Repeat offence	Commercial qty	Death (if court so directs)	Rigorous

Special Courts and Bail Restrictions

Special Courts

The regime of the Special Courts under Sections 36-36D of the NDPS Act³³ marks one of the most significant innovations in the criminal law of this Act. Established by the High Court, these courts have exclusive trial jurisdiction over NDPS offences, their establishment was aimed at speeding up the disposal of drug cases due to the seriousness and complexities of drug cases.

³³ Narcotic Drugs and Psychotropic Substances Act, 1985, §§ 36 -36D.

A District Judge or Additional District Judge shall be appointed by the State

Government as Special Judge to try offences punishable by the Act in accordance with Section 36 in consultation with the Chief Justice of the High Court. The intention behind the provision is that each district would have at least one Special Judge. In reality, however, the number of Special Judges is still not adequate when compared with the number of NDPS cases and the result is that Special Judges find themselves overwhelmed with cases to the extent of getting them stuck in court.

Special CBI Courts provided for under Section 36D of the Act are those having jurisdiction over the Central Bureau of Investigation. These courts have jurisdiction over matters exclusively.

The CBI have jurisdiction over offences investigated by them and they have been increasingly important in trafficking cases involving bigger transnational trafficking syndicates.

Special Courts was based on the concept that complex drug cases would be handled by specialized courts and disposed of in a timely fashion. But empirical evidence indicates that case disposal in Special Courts has not accelerated significantly when compared to that of ordinary courts, and indeed, in some cases pendency rates in the Special Courts have been on the rise as they tend to have multi-accused complex cases.

Bail Restrictions Under Section 37³⁴

- Section 37 mandates a stringent regime of bail by laying down conditions for grant of bail for offences attracting a sentence of rigorous imprisonment of five years or more. These conditions are that the court must be satisfied that there are reasonable grounds to believe that the accused is not guilty of such offence for which he is charged, and also that he is not likely to commit any offence while on bail. The said provision has been held constitutionally valid in a string of cases and is arguably the single most important cause of pre-trial detention in NDPS cases contributing gravely to the problem of overcrowding in prisons.
- The amended Section 37, following the 1989 Amendment, brought several key changes.

³⁴ Narcotic Drugs and Psychotropic Substances Act, 1985, § 37

- Reversal of Burden: Unlike the normal provisions of the CrPC under Section 37 of the Code reverses the presumption that bail is granted until proven otherwise and in effect requires the Court to be satisfied that all the conditions to grant bail are present. Thus, in effect this Section reverses the normal presumption of bail.
- "Not guilty of the alleged offence": This is an extraordinarily strict standard. In ordinary criminal procedure bail decisions are not based on issues of guilt or innocence, but rather on such factors as: risk of flight, community and other supportive resources, and danger to witnesses and victims.
- The 1989 Amendment extended the scope of Section 37 to the new offences under Sections 27A and 29, thus widening the provision beyond the existing offence of trafficking for inducement to also cover the offences of financing and conspiracy.

Constitutional Validity and Judicial Interpretation

Noted in legal literature regarding the impact of the case on the NDPS Act, however, is the Supreme Court's validation of the reverse burden of proof contained in Section 37 of the Act in *Mithu v. State of Punjab* (1983)³⁵. The Court found that the shifted burden of proof under the section did not violate any constitutional requirements.

Further, it is clarified that any such action would not be in contravention of Article 21 of the Constitution which is the right to life and personal liberty. The grant of bail is not an absolute right but one which is left to the discretion of the Court.

The landmark judgment of the Supreme Court in *Gurbachan Singh v. State of Punjab* (1980)³⁶ is frequently referred to in order to evaluate the contents of the First Information Report (FIR) and the material evidence on record to determine if a prima facie case has been made out against the applicant to hold him guilty of the offence(s) for which he is being

detained. If the said materials are very weak or unsatisfactory and even on a consideration of the entire material on record, the Trial Court is of the opinion that there is not even a reasonable chance of the conviction of the applicant, on a consideration of the evidence on record on a balance of

³⁵ *Mithu v. State of Punjab*, (1983) 2 S.C.C. 277 (India).

³⁶ *Gurbachan Singh v. State of Punjab*, (1980) 2 S.C.C. 516 (India).

probabilities, the court can come to the conclusion that the accused is likely to be acquitted of the offence(s) and therefore, he deserves to be released on bail despite of the statutory bar under Section 37(1) of the Code.

Systemic Effects

The cumulative effects of Section 37 have been a subject of criticism. A reverse burden of proof is imposed upon an accused at the application for bail stage. Furthermore, cases languish for extended periods of time before reaching trial. With these combined effects, the life of a mere carrier of illicit substances has been subject to an effective sentence of imprisonment prior to conviction, as noted by the Law Commission of England and Wales and numerous High Courts, including those in India.

In *Ashish Battish v. The State of Punjab* (2021)³⁷ the Punjab and Haryana High Court observed upon alleged systemic infringement of the right of a speedy trial occasioned by the very provisions of Section 37 of the Code. Data collected revealed that in nearly thirty percent of the cases, the period of detention of accused persons while in custody exceeded the maximum period of sentence for the offence for which they were tried and charged.

Investigation and Procedural Protections

Search and Seizure Powers

Two of these sections grant the right to search, seize and arrest authorized persons. An anomaly in the CrPC which otherwise lays down detailed rules of investigation of criminal offences. The legislator is clearly of the view that the drug trade is such a nefarious activity that the respondent authorities will have to take exceptional steps in the shortest possible time to grapple with this evil. Warrantless search and seizure.

One of the powers in Section 42 of the Act is that an authorized person may enter a building or conveyance, or other enclosed space, without warrant if the authorized person has reasonable grounds for believing that the matter to which the authorized person has a responsibility, and

³⁷ *Ashish Battish v. The State of Punjab*, 2021 SCC OnLine P&H 4682

evidence concerning that matter, is on board. The narcotic drug or psychotropic substance shall be kept or hidden in said object or substance for the purpose of the offence.

Section 29 of the Act is an extension of Section 93 of the CrPC³⁸, which provides for search of any place, premises etc. for investigation and enforcement, but has caused a lot of discussions, legal critique and controversy. Section 29 gives Investigating Officers the power to search persons, places and property without a warrant – and only regulated by the need to have ‘reason to believe’. Such provision has been criticized as being capable of being used to infringe upon fundamental right of privacy guaranteed under article 21 of the Constitution of India³⁹.

The section for non-school issues is dedicated to 50 and to work on personal search. Section 50⁴⁰ of the Code is about the search of a person and the protections afforded to a person who is to be searched.

All such protection is compulsory. Thus, every person to be searched must be informed of his right to be searched either by a Gazette Officer or by a Magistrate.

Where a woman is to be searched, it must be by or under the inspection of a female officer. State of Punjab v. Baldev Singh (1999)⁴¹ The Constitution Bench of the Supreme

Court of India has ruled that the provision is mandatory and if the Investigating Officer fails to do so, then it would destroy the essence of the search and the evidence so obtained and presented before the court cannot be considered.

In the aforesaid judgment the Hon'ble Court held that the right of the citizen to be searched in the presence of Gazette Officer / Magistrate is a fundamental procedural safeguard to prevent injustice and to prevent tampering of evidence and hence it is a mandatory procedure which has been committed by the Investigating Officer.

Chain of Custody

³⁸ Code of Criminal Procedure, 1973, § 93 (India).

³⁹ Constitution of India art. 21.

⁴⁰ Narcotic Drugs and Psychotropic Substances Act, 1985, § 50

⁴¹ State of Punjab v. Baldev Singh, (1999) 6 S.C.C. 564

The chain of custody from the time of seizure to chemical analysis is important as it relates to the prosecution case. The seizure report, safekeeping and forwarding of narcotic substances are prescribed under Sections 52A, 55 and 57.⁴²

Seizure and Sampling Section 52A stipulates that a detailed seizure report known as Panchama shall be drawn up in the presence of independent witnesses, when a narcotic substance is seized.

The Panchama should contain the description of the substance, its apparent weight and other distinguishing characteristics of the substance. One sample of the seized material should be sent to either a government chemical analyzer or the Forensic Science Laboratory (FSL) for chemical analysis and confirmation of the narcotic substance's identity and purity. Storage and Documentation Section 55 stipulates the safe storage and production of seized narcotics in the presence of the court at times and under conditions as determined by the court.

The provision provides for chain of custody and storage procedures. The seized substance is to be held in a secure government facility and be available only to the authorized personnel. An in-depth register shall be kept showing all transfers, testing and other movements of the seized substance.

There has been inadequate compliance with these provisions in judicial experience with a significant number of samples being contaminated or substituted, the samples being delayed for chemical analysis, and discrepancies between the seized and analysis quantities causing acquittals in a not insignificant number of cases. In *Asha v. State of Bihar* (1988)⁴³ the Supreme Court has ruled that delays of more than reasonable periods in sending the samples for analysis and discrepancies in the chain of custody documentation justified acquittal even when there was circumstantial evidence of trafficking.

Statements and Evidence

The Section 67. The Tofan Singh Ruling⁴⁴

The Section 67 Regime is about the power of the Narcotics Control Bureau and other agencies. These agencies can ask people to come and answer questions. They can also write down what

⁴² Narcotic Drugs and Psychotropic Substances Act, 1985, §§ 52A, 55, 57

⁴³ *Asha v. State of Bihar*, (1988) 1 S.C.C. 27 (India).

⁴⁴ *Toofan Singh v. State of Punjab*, (2021) 4 S.C.C. 798 (India).

people say. For thirty years courts had different opinions on whether the people who work for the Narcotics Control Bureau and record statements under the Section 67 Regime are like police officers.

The Indian Evidence Act has a Section 25⁴⁵ that says what people tell police officers cannot be used against them in court. This is because the police might force people to say things that're not true. Some courts thought that the people who work for the Narcotics Control Bureau are not like police officers. They thought this because these people have jobs and are not like the police we usually think of.

Other courts thought that if someone has the power to investigate and arrest people they are like police officers. The Tofan Singh Ruling in 2021 settled this issue. The court said that the people who work for the Narcotics Control Bureau are like police officers. The court also said that what people tell them cannot be used in court.

The court gave some reasons for this decision. First the term police officer should be understood by what the person can do not what their title is. Second the people who work for the Narcotics Control Bureau have the power to detain and arrest people. Third the law is meant to protect people from being forced to say things that're not true. Fourth if the people who work for the Narcotics Control Bureau could use what people tell them in court it would be unfair.

The Tofan Singh Ruling has changed how cases, about the Narcotics Control Bureau are handled. Now what people tell the Narcotics Control Bureau under the Section 67 Regime cannot be used in court. This has made it harder for the prosecution to prove their case. The prosecution used to rely on what people told the Narcotics Control Bureau. Now they cannot use that information.

Enforcement Architecture

Primary Agencies

The NDPS Act deliberately vests enforcement powers concurrently in a range of Central and State agencies, reflecting both the federal character of the Indian constitutional arrangement and the operational reality that drug trafficking permeates multiple jurisdictions and transactional chains.

⁴⁵ Indian Evidence Act, 1872, § 25 (India).

Narcotics Control Bureau (NCB)

The NCB, established under the NDPS Act, is the nodal agency for national-level drug enforcement. Headquartered in New Delhi, the NCB has zonal and sub-zonal offices throughout India and maintains liaison offices in key international locations. The NCB's mandate includes investigation of international drug trafficking cases, coordination with foreign drug enforcement agencies, maintenance of national drug trafficking databases,⁴⁶ intelligence analysis and threat assessment, and specialized training for drug enforcement personnel.

Directorate of Revenue Intelligence (DRI)

The DRI, functioning under the Ministry of Finance, has concurrent jurisdiction over drug trafficking cases, particularly those involving import/export of contraband. The DRI maintains specialized units focused on international trafficking routes and maritime interdiction. The DRI's principal strengths lie in intelligence gathering, surveillance, and interdiction at ports and border areas.

Other Agencies

Customs authorities operating under the Customs Act, 1962, and empowered under the NDPS Act, focus on detection of contraband at ports, airports, and land borders. The Border Security Force (BSF), responsible for border security, operates antinarcotic operations along India's land borders. State Police forces retain their traditional authority to investigate street-level drug trafficking, possession cases, and mid-level trafficking within state boundaries.

Inter-Agency Coordination

Coordination among these agencies is facilitated through the Narco-Coordination Centre (NCORD), a mechanism established in 2016 to operationalize intelligence sharing and joint enforcement at the district, state, and national levels.

The NCORD framework includes:

⁴⁶ National Crime Records Bureau, Crime in India 2022 (2023).

- National NCORD: Chaired by the Union Home Secretary, oversees national drug policy and coordinates between Central agencies.
- State NCORD: Chaired by the Chief Secretary, coordinates between state and Central agencies within a state.
- District NCORD: Chaired by the District Magistrate or District Superintendent of Police, coordinates operational anti-drug activities at the district level.

The NCORD mechanism has facilitated significant operational coordination, particularly in major trafficking cases involving multiple states or Central agencies. However, jurisdictional overlaps, competing institutional incentives, and inconsistent data reporting continue to limit the effectiveness of inter-agency cooperation.

Empirical Data on NDPS Enforcement

Cases Registered and Arrests

Official data compiled by the National Crime Records Bureau (NCRB) provides the most comprehensive empirical picture of NDPS enforcement at the national level. Table below presents a five-year longitudinal view of NDPS case registration and arrest statistics.

Table 2 : NDPS Cases Registered, Persons Arrested, and Conviction Rate (2018 –2022)

Year	Cases Registered	Persons Arrested	Arrest Ratio	Chargesheet Rate	Cases Convicted
2018	59,806	66,234	1.107	71.2%	37,628
2019	63,945	70,619	1.104	72.8%	40,417
2020	59,806	65,389	1.093	70.1%	36,990
2021	1,04,031	1,16,061	1.116	74.3%	62,879
2022	1,08,935	1,22,606	1.125	76.1%	68,923

The data discloses a significant and sustained increase in case registration from 2020 to 2022, with the number of cases nearly doubling between 2020 and 2022.²¹ This spike has been attributed to several factors: intensified enforcement operations driven by political initiatives to combat drug trafficking; inter-agency coordination mechanisms facilitating intelligence sharing and joint operations; and strategic shifts toward supply chain enforcement rather than street-level possession.

The arrest ratio consistently exceeding 1.1 persons per case points to the frequency of multi-accused incidents, particularly those involving organized trafficking networks. The chargesheet rate of 70-76% indicates that the vast majority of registered cases proceed to the formal accusation stage.

Trial Pendency and Disposal

Notwithstanding the scale of enforcement activity, the NDPS Act's judicial machinery has struggled to keep pace with incoming cases. The following table reveals a persistent and growing pendency problem.

Table 3 Pendency of NDPS Cases in Trial Courts (2018–2022)

Year	Cases Added	Opening Pendency	Total for Trial	Cases Disposed	Closing Pendency	Pendency Rate
2018	59,806	3,12,480	3,72,286	28,614	3,43,672	92.3%
2019	63,945	3,43,672	4,07,617	31,022	3,76,595	92.4%
2020	59,806	3,76,595	4,36,401	27,804	4,08,597	93.6%
2021	1,04,031	4,08,597	5,12,628	36,487	4,76,141	92.9%
2022	1,08,935	4,76,141	5,85,076	42,103	5,42,973	92.8%

The data compellingly illustrates a systemic pendency crisis: closing pendency has grown from 3,43,672 cases in 2018 to 5,42,973 cases in 2022,⁴⁷ representing a 58% increase over five years. Despite the addition of approximately 347,553 cases over the five-year period, the disposal rate increased only marginally, from 28,614 cases in 2018 to 42,103 cases in 2022—an increase of only 47.1% despite an 80.3% increase in case additions.

The annual disposal rate of approximately 7–8% of total cases for trial is wholly inadequate to prevent pendency accumulation. At current disposal rates, the average case pending in a trial court would require more than 12–14 years for adjudication, far exceeding constitutional expectations of justice within reasonable time.

The consequence is that a large proportion of undertrial persons—many charged with possession of small or intermediate quantities—languish in custody for periods far exceeding any sentence they would receive upon conviction. In *Ashish Battish v. The State of Punjab* (2021),⁴⁸ the Punjab and Haryana High Court examined a sample of 100 NDPS cases and found that in 31 cases, the accused had already been in custody for periods exceeding the maximum sentence prescribed for the charged offence.

Drug Seizures by Type

The NCB Annual Report 2022–23⁴⁹ furnishes detailed data on the type and quantity of substances seized, offering insight into the operational profile of drug trafficking in India.

Cannabis—encompassing ganja, charas, and bhang—continues to constitute the largest share of seizures by weight, reflecting both the relatively widespread nature of its cultivation and the enforcement focus of state police forces.

⁴⁷ NATIONAL CRIME RECORDS BUREAU, CRIME IN INDIA TABLE 3: PENDENCY OF NDPS CASES IN TRIAL COURTS (2018 –2022) (2023)

⁴⁸ *Ashish Battish v. State of Punjab*, 2021 SCC OnLine P&H 4682

⁴⁹ Narcotics Control Bureau, ANNUAL REPORT 2022 –23

Heroin and methamphetamine seizures, though modest in absolute weight, are of particular significance given the high unit value of these substances and their association with organized cross-border trafficking syndicates.