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## LEGAL INTERPRETATION OF THE NDPS ACT: ANALYZING THE ROLE OF THE JUDICIARY IN DRUG CONTROL

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### SYNOPSIS

With an emphasis on how the court has influenced the application of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 through legislative provisions, case law, and judicial interpretation, this article examines the role of the judiciary in its implementation and interpretation. One important piece of legislation in India that aims to curb drug misuse, trafficking, and associated crimes is the NDPS Act. But in terms of enforcement, interpreting the law, and striking a balance between punishment and rehabilitation, its implementation has been fraught with difficulties. The role of the judiciary in interpreting these provisions is critically examined, focusing on how courts have balanced strict legal provisions with the need for a human-centric approach to drug addiction, rehabilitation, and the protection of individual rights.

This article examines how judicial judgments have affected the execution of the NDPS Act, notably in situations concerning the rights of the accused, the role of law enforcement, and the implementation of rehabilitative measures. The obstacles that the judiciary faces in guaranteeing justice while implementing the requirements of the NDPS Act are discussed, including mandatory punishment, the limits of judicial discretion, and the necessity for more targeted legislative revisions.

**KEYWORDS:** NDPS Act, Judicial Interpretation, Drug Abuse, Judiciary role, Legal Provisions and Rehabilitation

### INTRODUCTION:

Judges make two distinct contributions to drug misuse prevention. One is within the courtroom, where they operate as judicial officers, interpreting and applying the law as enacted by statutes. However, under an adversarial system, judges' roles are somewhat constrained because they cannot go beyond what is pled before them by the defence and prosecution.

However, outside of courts, judges, acting as resourceful individuals and participating in various seminars, workshops, symposiums, and conferences, provide valuable suggestions and recommendations that affect policy decisions

and the law-making process by enactments and legislatures accordingly<sup>1298</sup>.

Some of the thoughts expressed by judges outside of the courtroom on drug abuse are motivating. For example, **the Chief Justice of India, T.S. Thakur**, stated during a recent judicial conference on "Drug Menace in India: Overview, Challenges and Solutions" held in Manali that "India needs to enforce tough drug prohibitions. The drug problem has become a severe issue. A total of 67% of Punjab's population is addicted to various substances. What concerns me the most is that 60% of India's population is under the age of 30, with

<sup>1298</sup> Towfeel Ahmad Mir, "Role of Judiciary in Controlling Drug Abuse in India" 3 *Journal of Legal Studies and Research Criminal Law Review* 276 (2017).

67% of young people addicted to narcotics. He is surprised that while investigating agencies typically apprehend Nepalese nationals or low-level drug peddlers, the kings of the enterprise are often overlooked. The judiciary and administration must reflect on whether we are on the right track and treating people fairly. To eradicate narcotics from society, we must take serious and effective measures<sup>1299</sup>.

**Mansoor Ahmad Mir, Chief Justice of the Himachal Pradesh High Court**, stated that "complete eradication of drugs is necessary; the rate of drug addicts in the country has reached alarming heights." Drug misuse among our younger age is a big problem. Increasing economic stress and family instability are contributing to drug misuse. The global drug trade has an annual turnover of \$500 billion, second only to the petroleum and arms markets. "India has one million registered heroin addicts." He stated, "Pharmaceutical products containing narcotic drugs are increasingly being abused, and eradicating this problem is a major challenge." Figures reveal that approximately half of students had tried a drug or narcotic substance at least once by the time they enter class IX<sup>1300</sup>.

Similarly Addressing an awareness meeting on drug abuse at R.V.S. College of Engineering and Technology in Tamil Nadu, **Principal District and Sessions Judge R. Poornima** stated, "Drugs have corroded the basic structure of society, destabilising growth, reducing productivity, and weakening human resources and national strength. According to recent figures, 25,426 persons committed themselves as a result of drug addiction and related difficulties across the country over the last decade. Suicides owing to drug issues outnumbered those due to dowry, poverty, and a lack of funds. The country had an estimated 3.4 million drug abuse victims. Drug abusers frequently experience

illnesses such as depression, anxiety, bipolar disorder, attention deficit hyperactivity disorder, and antisocial personality disorder. To achieve a great career and maintain excellent health, youths should avoid using drugs<sup>1301</sup>.

#### CONTRIBUTION OF JUDGES INSIDE COURTS<sup>1302</sup>:

Judges, as members of the judicial branch, are typically expected to apply legislatively enacted law to the circumstances before them. However, in practice, as proven by "realism," judges' roles are more than just that. Judges interpret and develop the law as they apply it to the facts. Thus, in the process of interpretation, judges create laws, despite the fact that the legislature is primarily responsible for this duty. In the event of socioeconomic crimes, such as those committed under the NDPS Act. Judges have taken an activist role in combating drug misuse, not only by adhering to the deterrence theory of punishment, but also by adopting a sociological perspective as responsible members of society. To combat the drug misuse epidemic, the judiciary has worked tirelessly to implement any measures that can serve to weaken drug abuse practices in India. In 2012, Justice Thakur led an official operation to trace narcotics confiscated over the previous decade. This was the first formal drill of its type. The three-year operation found that only 16 lakh kg of the 51.4 lakh kg of narcotics captured over the prior decade was destroyed.

On 14 December 2016, the Supreme Court instructed the Centre to put in place a national action plan within six months to stem the escalating narcotics and alcohol misuse cases among schoolchildren, stating that students are encouraged to become "drug peddlers once they get addicted". A bench comprising Chief Justice T. S. Thakur and D.Y. Chandrachud also directed the Centre to undertake a countrywide study on substance and alcohol misuse, as well

<sup>1299</sup> Towfeel Ahmad Mir, "Role of Judiciary in Controlling Drug Abuse in India" 3 Journal of Legal Studies and Research Criminal Law Review 277 (2017).

<sup>1300</sup> Towfeel Ahmad Mir, "Role of Judiciary in Controlling Drug Abuse in India" 3 Journal of Legal Studies and Research Criminal Law Review 277 (2017).

<sup>1301</sup> "Drug Abuse Corrodes Basic Structure of Society", The Hindu, July 06, 2016, available at: <https://www.thehindu.com/news/national/tamil-nadu/%E2%80%9CDrug-abuse-corrodes-basic-structure-of-society%E2%80%9D/article14473928.ece> (last visited on Apr. 20, 2024).

<sup>1302</sup> Towfeel Ahmad Mir, "Role of Judiciary in Controlling Drug Abuse in India" 3 Journal of Legal Studies and Research Criminal Law Review 279 (2017).



as the use of psychotropic substances among students in schools across the country. The bench suggested revising the curriculum to raise awareness of the negative impacts of substance addiction among students. The directives were issued in response to a 2014 PIL filed by Nobel laureate Kailash Satyarthi's NGO Bachpan Bachao Andolan<sup>1303</sup>.

In the case of *D.K. Basu v. State of West Bengal*, Hon'ble Apex Court reiterated the observation of the Supreme Court of United States of America in *Miranda v. Arizona*<sup>1304</sup> and held that "The Latin maxims *Salus Populi Suprema Lex* (The safety of the people is the supreme law) and *Salus Republicae Suprema Lex* (Safety of the State is the supreme law) coexist and are the heart of the doctrine implying that the welfare of an individual must yield to that of the community". The same was reiterated in the case of *State of Punjab v. Baldev Singh*<sup>1305</sup> where the Supreme Court of India emphasized that "it cannot overlook the context manner in which the NDPS Act operates and the factor of widespread illiteracy among persons subject to the investigation during drug offences. Thus, due procedure should be followed to ensure the welfare of the people"<sup>1306</sup>.

In *State of Punjab v. Balbir Singh*<sup>1307</sup>, the Supreme Court of India provided guidelines<sup>1308</sup> for trial courts dealing with drug charges under the N.D.P.S. Act to clarify interpretations.

1. If a police officer conducts a search or arrests a person in the usual course of an inquiry into an offence under the provisions of Cr. P. C. without any prior information as anticipated by the

provisions of the N.D.P.S. Act, Section 50 of the N.D.P.S. Act would not apply.

2. Under Section 41(1) of the N.D.P.S. Act, an empowered Magistrate may issue a warrant for the arrest or search of persons suspected of committing offences punishable under Chapter IV of the Act if he has reasonable grounds to believe that such offences have been committed or that such substances are concealed in any building, conveyance or place. If such an arrest or search is conducted under the provisions of the N.D.P.S. Act by anyone other than the authorised officers, it is illegal.
3. According to Section 41(2) of the N.D.P.S. Act, only the empowered officer can authorise his subordinate to carry out an arrest or search indicated therein. Any violation of the aforementioned requirement of law would jeopardise the prosecution's case and nullify the conviction.
4. Section 42(1) of the N.D.P.S. Act requires that any prior knowledge obtained by the empowered official be documented in writing. If a person has personal knowledge of an offence under Chapter IV of the N.D.P.S. Act, or if evidence of such an offence is hidden in a building, they can arrest or search without a warrant between sunrise and sunset. This provision does not require them to record their reasons for belief. If an officer conducts a search between sunset and morning, they must document their reasons for doing so. The provisions indicated above are mandatory, and any violation could jeopardise the prosecution's case and the trial.
5. Section 42(1) of the N.D.P.S. Act requires that any prior knowledge obtained by the empowered official be documented in writing. If a person has personal knowledge of an offence under Chapter

<sup>1303</sup> "Bachpan Bachao Andolan's Efforts for 30 Days Provides Freedom to 1623 Child and Bonded Labourers", The India Post, July 01, 2022, available at: <https://theindia-post.com/headline/bachpan-bachao-andolans-efforts-for-30-days-provides-freedom-to-1623-child-and-bonded-labourers/> (last visited on Apr. 20, 2024).

<sup>1304</sup> *Miranda v. Arizona*, 384 US 436.

<sup>1305</sup> *State of Punjab v. Baldev Singh*, (1999) 6 SCC 172.

<sup>1306</sup> "Narcotic Drugs Traffic and Control in India", Shodhganga : A Reservoir of Indian Theses @ INFLIBNET, available at: <http://hdl.handle.net/10603/256998> (last visited on Apr. 20, 2024).

<sup>1307</sup> *State of Punjab v. Balbir Singh*, AIR 1994 SC 1872.

<sup>1308</sup> Towfeel Ahmad Mir, "Role of Judiciary in Controlling Drug Abuse in India" 3 Journal of Legal Studies and Research Criminal Law Review 280 (2017).

IV of the N.D.P.S. Act, or if evidence of such an offence is hidden in a building, they can arrest or search without a warrant between sunrise and sunset. This provision does not require them to record their reasons for belief. However, if such an officer is required to conduct a search between sunset and morning, he must document the basis of his belief. The provisions are mandatory to the extent stated above, and any violation of them would jeopardise the prosecution's case and vitiate the trial.

6. Failure to comply with Sections 100 and 165 of the Criminal Procedure Code by a police officer conducting a criminal investigation is considered an irregularity.
7. If an official authorised by Section 41(2) of the N.D.P.S. Act conducts a search under Sections 100 and 165 of the Cr. P.C., the search is not necessarily illegal and does not affect the trial.

It is mandatory for an empowered officer or authorised officer acting under Section 41 or 42 of the N.D.P.S. Act to inform the person concerned of his right under Section 50 of the same Act before conducting a search of the person, and failure to do so will jeopardise the prosecution's case and vitiate the trial.

#### **Presumption U/s 35 of NDPS Act – A Boon:**

The protection of the victims is hindered by the Section 35 and 54 of the NDPS Act, where the burden of proof lies upon the accused to disprove his culpable mental state including his intention, motive, knowledge, of a fact and belief in, or reason to believe, a fact, and the possession of the illicit articles, which are way connected to the usage, production, storage of the drugs,

The above-mentioned sections itself acts as critical factors to be decided, where it adds an additional burden on the offenders to rebut their culpable mental state. The primary question lies upon the offenders, where the

offenders at an occasion get into struggle to rebut their mental state that it is not in the level or intended to commit an offence.

Some offenders who themselves are not offenders but in some way are interconnected into the chain of circumstances of the offences, which adversely drags them and charges them. Many innocents, illiterate, shall get struck by those Sections, where the role of Judiciary is important to decide the applicability of such Sections and a vast interpretation and guidelines are required.

The Section 35 of the Act relaxes the job of the prosecution in proving the guilt of the accused. The absolute purpose of the act is only lies on the Court to believe that the fact is to be proved by the prosecution beyond the reasonable doubt when it exists and not on the preponderance of possibility. The Section 35 of the act is an ambiguity, and it should be interpreted and decided with a precise judicial mind, to discharge the accused from rebutting his burden from proving his mental state, as held in **Abdul Rashid, Ibrahim Mansuri –Vs– State of Gujarat**<sup>1309</sup>.

#### **Reverse Burden of Proof – A Barrier to the Offender:**

Normally, not like other criminal jurisprudence, where the accused is held innocent unless his guilt has been proved beyond doubt by the Prosecution, the NDPS has the special provisions, which creates strong doubt on the accused, and some presumptions shall be considered to be lied on the hands of the offenders, and it is the duty of the offenders to rebut them to prove his innocence.

The Section 35 and 54 are the two sections where the presumptions was made into the offenders, and the rebuttable burden lies on the offender. But in some cases, the presumptions got rebutted and the prosecution may bear a reverse burden of proof to prove the allegations against the offenders. Because there is a reverse burden of proof, the prosecution shall

<sup>1309</sup> Abdul Rashid, Ibrahim Mansuri v. State of Gujarat., AIR 2000 SC 821

be put to a strict test for compliance with the provisions of Section 35 and 54 of the act. At any stage of the trial, the offender is able to create a reasonable doubt, as a part of his defence, to rebut the presumption of his guilt, the benefit will naturally tend to go to him.

The Apex Court held that the act which raises presumptions to the culpable mental state on the accused as also place the burden of proof on him, but a bare perusal of the said provision shows that presumption would operate in the trial of the accused only in the event the circumstances contained therein are fully satisfied. The primary burden exists upon the prosecution and only when it stands satisfied, the legal burden shift. The standard of proof required for the offender to prove the innocence is not as high as that of the prosecution. Whereas the standard of proof required to prove the guilt of the accused on the prosecution shall be beyond all reasonable doubt, in other hands it is preponderance of probability. In case the prosecution fails to prove the foundational facts which attract the provisions of Section 35 of the Act, the mental state of the offender which is possession of contraband by the offender cannot be said to have been established, as in the **Hanif Khan @ Annu Khan -Vs- Central Bureau of Narcotics**<sup>1310</sup>.

#### **Mere Possession cannot constitute a charge U/s 54 of the Act:**

On some circumstances, the offender's act may be fabricated by the authorities according to their convenience at the time of arresting and seizing the Drugs. For instance, there are various possibilities and opportunities for the authority to color the incidents and alter the actual quantities of the drug seized. Therefore, stringent procedure shall be followed at the time of seizing and taking custody of the drugs irrespective of the quality and quantity as held by the Apex Court, which actively plays an important role in the protection of the offenders.

The primary issues arise on the adverse side of the offenders is the 'Possession'. There are many interpretations held by the Apex Court for the meaning of 'Possession' under the Act. This interpretation is very much important in the protection of the offenders, who are falsely implicated. The Section 20(b) states that the possession of the contraband articles is an offence under the act, and in order to make the possession of such articles illicit, there should be conscious possession. The Apex Court clearly interpreted that there should be the awareness to the offender that there is something illicit, and mere custody without such conscious does not amounts to any offences and the offender cannot be held guilt under the act.

It was held by the Apex Court that unless the possession was coupled with the requisite mental element, the section 20(b) would not be attracted, in which it relates to offences for possession of such articles, as held in **Balbir Kaur -Vs- State of Punjab**<sup>1311</sup>.

It is also concluded in many cases that mere possession of a Drug amounts to an offence as the Statute gave presumption, which presupposes that the culpable mental state should be proved beyond the reasonable doubt and it should not be decided merely on the when the existence of the possession of the drug is just established by the preponderance of possibilities.

But the Apex Court held that there should be some corroborative evidence which supports the mental state as well as the possession of the Drug in the offender, and interpreted it in a precise manner where the possession is 'knowingly' is still lies on the prosecution to prove that it is in the knowledgeable possession of the offender and does not attract the provision of presumption under 35 and 54 of the Act, held in **Bhola Singh -Vs- State of Punjab**<sup>1312</sup>.

<sup>1310</sup> Hanif Khan @ Annu Khan v. Central Bureau of Narcotics, (2020) 16 SCC 709

<sup>1311</sup> Balbir Kaur v. State of Punjab, AIR (2009) 15 SCC 795.

<sup>1312</sup> Bhola Singh v. State of Punjab, AIR (2011) 11 SCC 653.



### Confiscation and Destruction before Judgment – Isn't a Prejudice ?

The authorities at some instances may confiscate and destruct the seized drugs on their own. It may be a process of preventing the drugs from flooding into the society, but there should be some guidelines followed by the authorities on such process.

It should not cause prejudice to the offender at any cost, and the offender should be protected from the fabrication of events. The authority may at some instance, may alter the quality and quantity of the seized drugs to their favor before the trial for their credibility. The confiscation and destruction process should not be carried out by the authorities without and order of the magistrate.

The Apex Court held some instructions to be followed by the authorities to protect the fair trial process of the offender, in confiscating and destructing the seized drugs before the pronouncement of the Judgment. It is held that no process of the authorities may be considered as a procedural mistake if an application may be filed before the jurisdictional magistrate immediately after seizing the drugs, which shall include the certifying correctness of the inventory prepared, taking photographs, and certifying the photographs in front of the Magistrate, and to draw a representing samples of the drug, and the same shall be duly certified by the Magistrate as held in **Noor Aga –Vs- State of Punjab**<sup>1313</sup>.

For the good sake of the Society, after due verification and authorization of the Magistrate, the confiscated drugs shall be destructed with the 10 days from the date of seizure, and it held that it cannot be considered as the prejudice to the accused, as the quality and quantity which is the subject matter of the trial, was already recorded by the magistrate under the provisions of the act, and the requirement of such drug at the time of trial is unnecessary, is

held by the High Court of Odissa, in Writ Petition (Civil) No: 32580/2021 in **State of Odissa –Vs- Registrar General of Odissa**<sup>1314</sup>.

### Confession – A Gift to Prosecution:

The confession of the offenders plays an important role in the Judicial Trail related to the NDPS Act. Alike other cases, a confession by an offender may be led to the victory of the prosecution. Another important factor in the protection of the offenders, is to protect them from the illegal process of extracting their confession.

Logically, a convict in a criminal case does not desired to confess his guilt, or admit his charge against him. But a confession may be a key for the authorities to find the line of action of the case in order to conclude it without any hassle. For example, a Police officer, though not legally permitted to get confession, unless the offender voluntarily comes forward to speak out the incidents done by him.

The case where the son of the leading celebrity got arrested for the possession of drug, where his confessional statement of the offenders has no evidentiary value at the time of the trial and it cannot be used as the evidence before the court, whereas it can only be used for only the investigation purposes and the only material against the offenders, as held in the **Aryan S Khan –Vs- Union of India**, by the Bombay High Court in CrI.O.P. No: 3624/2021<sup>1315</sup>.

In some other cases, like the Customs officer who are in a regular course in seizing the Drugs smuggled, were also in the process of extracting the confession from the offenders, like the State Police. A Statuary provision empowers them to do it so. Section 67 of the Act, offers the special forces like the aforesaid Customs officer, also indulges in the job of extracting the confession involuntarily using criminal force against the offenders. To a great shock, many convictions have been delivered by the Presiding officers with mere

<sup>1313</sup> Noor v. State of Punjab, AIR (2008) 16 SCC 417.

<sup>1314</sup> Available at: <https://www.orissahighcourt.nic.in/>

<sup>1315</sup> Available at: <https://narcoticsindia.nic.in/>



consideration of the confessions of the offenders. Hence, challenging the constitutional validity of the Section 67 of the Act arose, which argued as a violation against the Article 21 of the Indian Constitution.

The Section 67 is also gains its immunity from the Section 26 of the Indian Evidence Act. The Section 26 of the Indian Evidence Act, which itself acts as a savior of the offenders who are incriminated by the authorities to confess. Later, there become an illegal exemption for all other authorities other than the State Police, to extract the confession from the offenders and use it as a corroborative evidence to support the prosecution case.

The Judiciary done its valuable duty in protecting the offenders of the NDPS Act, where the Apex Court held a celebrated guideline relating to the provisions of Section 67 of the Act. The admissibility of the confession made before the authority, who is empowered under the aforesaid Section, there should be role of summons, which shall be served to the offenders, and the appearance for the summons should be voluntarily done by the offenders.

The exemption was provided to the aforesaid section, where the confession by an offender cannot be used against him, unless it is made before the presence of a Magistrate. The confession made without any service of summon, fails to gain the fruit of the Section 67 of the Act, and directly merges within the Section 26 of the Indian Evidence Act, where the Apex Court held a celebrated guideline that the Customs officers themselves also should be considered as Police officers, and any confessions made before them shall stands inadmissible as stated in the Section 26 of the Indian Evidence Act. This landmark judgment was held in **Raju Premji -Vs- Customs Ner Shillong**<sup>1316</sup>.

The Investigating Officer also considered as Police officer which comes under the meaning

of the Section 26 of the Indian Evidence Act, where the self-incriminating extracting of the confession from the offender cannot be taken evidence before the Court of law and it is inadmissible where it cannot support the prosecution case in the trial. **Ghulam Muhd Bhat -Vs- NCB** in CrI.O.P No: 409 / 2021 by The J&K and Ladakh High Court<sup>1317</sup>.

The Apex Court also interpreted in a celebrated judgment that the District Revenue Inspector and the Customs officer are not empowered Police Officers and they have no authority to lodge complaint against the offenders and file charge sheet under section 173 of the Code, and they also have no authority to record the confessional statements of the offenders held in **Rajkumar Karwal -Vs- Union of India**<sup>1318</sup>.

#### Search of a Person – A Violation?

The Important and the preliminary part of an offence starts with the Search of a person, whom the authority suspects, under a secret and credible information, or through direct search. It is a debatable topic where an authority is absolutely empowered under the NDPS Act, to conduct a search and recover material evidence from that person.

The powers vested under this act to the authority, are vast and it should be distinguished and interpreted carefully, which in other hand it will lead to a great prejudice to the offenders. A stringent procedure should be followed to protect the offenders from the search. As previously discussed, the investigation agency is not an absolutely empowered person to conduct a search, as the output of the search should be duly verified by a Gazetted officer or Magistrate. In other words, the person shall be informed that he has the right to be searched in presence of a Magistrate or Gazetted officer. The transparency leads to a satisfactory justice to the offenders. Hence, the genuineness of the search is tends to be legal when it is done by following a guidelines as laid

<sup>1316</sup> Raju Premji v. Customs, AIR (2009) 16 SCC 496.

<sup>1317</sup> Available at: <https://narcoticsindia.nic.in/>\*

<sup>1318</sup> Rajkumar Karwal v. Union of India, (1990) 2 SCC 409.

down by many celebrated judgments of the Apex Court.

The goal of the interpretation of the statutes by the judiciary is also to safeguard the misuse of power of the investigating agency, who are in possibility to conclude an investigation as favourable to them, without any hard work. It is also important to prevent causing any harm to innocent persons, whom being searched by the authorities irrespective of their guiltiness. The search should apprise a person who being searched of his right by the imperative part of the investigating agency. Some mandatory and strict compliance should be followed while search of the illicit possession of the drugs from the offenders.

The Apex Court also opinioned that the protection has been incorporated in Section 50 for the benefit of the person intended to be searched, were they are mandatory or directory, but if the person who being searched by the authority is not being informed his rights, it adversely becomes unsustainable in law, and the illicit drug seized from offenders during search conducted, violating the safeguard provision of Section 50 of the Act, cannot be used as evidence of proof and the offender cannot be charged of unlawful possession of the contraband and any other material recovered during that search may be relied upon by the prosecution to prove the guilt, held in **Vijay Singh Chandubha Jadeja vs State Of Gujarat**<sup>1319</sup>.

The Apex Court also interpreted in the provisions of Section 50 of the Act, where to prove the transparency and the search tends to be done in a genuine manner, the authority shall follow the provisions of the section, and a consent memo shall be collected from the person who is being searched. The consent memo itself a valid evidence, which shows that the authority had given the right of a person being searched under the provisions of the section 50 of the act, and the person's right is vested by the statute.

The consent memo may be in written form or in any other form that will depend on the facts of the case, but the primary matter to be dealt is that the whether the person was given the right to demand the presence of a Gazetted Officer or Magistrate before the authority begins to search him. The procedure without any prove of the consent memo or even uttering a single word from the person who being searched, is clearly amounts to non-compliance of the provisions stated under section 50 of the act and it would be fatal to the prosecution case as held in **Nirmal Singh Phelwan @ Nimma -Vs- Customs Inspector**<sup>1320</sup>.

It is also interpreted that the Police Commissioner or the Assistant commissioner himself being a Gazetted officer, can act as a Gazetted officer or Magistrate, and there will be no bar on the search by that person and the person being searched have no bar legally to refuse that he cannot be searched by such Gazetted officer, within the same Department. This important judgment was held in <sup>(8)</sup> **Joswin Lobo -Vs- State of Karnataka**, CRLA/6916/2021 by High Court of Karnataka<sup>1321</sup>.

#### **Ignorantia juris non excusat – A Exemption:**

Another perspective of the provisions of the Section 50 of the act shall be interpreted on the obligations. The authority who undertake to search a person, thinks themselves, at some occasion, that they are vested with the obligation to inform the person who being searched by them, his rights, contained in the section 50 of the act. But it clearly lies on the intention of the searching authority, whether they are conducting the search in a transparent and legal manner or to conduct it by utilizing the advantage that the person being searched was not aware of the right vested therein.

It is an absolute prejudice caused to the person who being searched, if he was hidden from the knowledge, in which he got the right, to ask for the presence of a Gazetted officer or a

<sup>1319</sup> Vijay Singh Chandubha Jadeja v. State of Gujarat, AIR 2014 SC 77

<sup>1320</sup> Nirmal Singh Phelwan @ Nimma v. Customs Inspector, AIR (2011) 12 SCC 298

<sup>1321</sup> Available at: <https://narcoticsindia.nic.in/>

Magistrate. The general principal of law, stating “Ignorantia juris non excusat” shall not be applied in this case, and the ignorance of the person being searched cannot amount to ignorance, and it shall be excused for the prevention of prejudice to him.

The application of the judicial mind in each and every case, tends to a foundation of a lot of justifiable interest and exemption from the law. In a celebrated case decided by the Apex Court, it exempted with an explanation that an offender, in a situation, could take a defense that he was unaware of the procedure laid down in Section 50 of the NDPS Act. Ignorance does not normally afford any defense under the criminal law, since a person is presumed to know the law. In disputedly, ignorance of law often in reality exists, though as a general proposition, it is true, that knowledge of law must be imputed to every person.

But it must be too much to impute knowledge in certain situations, for example, we cannot expect a rustic villager, totally illiterate, a poor man on the street, to be aware of the various law laid down in this country i.e. leave aside the NDPS Act. We notice this fact is also within the knowledge of the legislature, possibly for that reason the legislature in its wisdom imposed an obligation on the authorized officer acting under Section 50 of the NDPS Act to inform the suspect of his right under Section 50 to be searched in the presence of a Gazetted Officer or a Magistrate warranting strict compliance of that procedure, held in **Ashok Kumar Sharma – vs- State Of Rajasthan**<sup>1322</sup>.

#### **Seizure of Drugs – Legal Procedure:**

The secondary process which constitutes the cognizance of the offence on a person, is the seizing of the Drugs, which were in possession of the offender. There are some vast procedures to be followed by the investigating authority in seizing the drugs from the offenders. It should be viewed seriously as it decides the case, where the offenders may be convicted on the

basis of the quality and the quantity of the possessed drugs. The investigating authority should work along with the procedures to be followed under the Sections 57 of the NDPS Act.

The procedure of seizing starts with the search of a person, whom has been suspected by the investigating agency, and the procedure of seizing begins. The Investigating authority may be aware at the time of seizing, and it should not be maneuvered. The seizing should be done in the presence of a Gazetted officer or a Magistrate, who are empowered under the provisions of the Act. A Seizure Mahazar plays an important role in the process of seizing. The Mahazar is a detailed record of the description of the drug, seized from the offender. The procedure for laying down of the Mahazar, is held by the Apex Courts in many cases, which has reversed the judgment due to the non-compliance of the provisions of the act.

The primary conditions and the procedure laid down by the Apex Court is that the Seizure should not be done without producing a report of it. The report should be produced at the time of the seizure, and if required and the Police officer is devoid of the basic requirements to measure or to find the value of the drug, the report may be produced within a reasonable time, after taking it to such place, where the officer thinks fits, to measure and to do other requirements as mentioned in the provisions of the law. The applicability of the seizure in the trail becomes inadmissible, if there any procedural illegality at the time of seizing, and it should not cause any serious prejudice to the offenders.

The compliance of the procedure will result in the prevention of tampered or interpolated of the seized drugs at the time of search and seizure. It is also held that the procedures laid down by the Narcotics Control Bureau are followed by the Investigating Officer, and though the instructions not having the force of law, the goal of such instructions is to guide the investigating officer. It is true that when a contraband article is seized during investigation

<sup>1322</sup> Ashok Kumar Sharma v. State of Rajasthan, 2013 (1) SCALE 39



or search, a seizure mahazar should be prepared at the spot in accordance with law, as held in **Khet Singh -Vs- Union of India**<sup>1323</sup>.

It is also held by the Apex Court that the physical nature of the drug is not sufficient for the offence to be constituted under the provisions of the NDPS Act, and also the chemical and forensic analyser also concluded that the purity of the substances failed to match with the chemical components of the drug alleged, as held in the **Sukhdev Singh -Vs- The state of Punjab** in Criminal Appeal No: 1004/2016 by the High Court of Punjab.

### **Small and Commercial Quantity – An Ambiguity:**

In the other hand, the Investigating agency tends not to observe the intention of the Drug possessor, as he is a distributor or a personal consumer. The view on the offenders should be two, where there are both drug addicts and the drug traffickers. The investigating agencies have no obligation under the act to distinguish the two types of drug handler, where it becomes the utmost duty of the Court to decide it. In such cases, it should be cleared that the drug possessor is either a drug addict or drug trafficker. It can be determined and the same is distinguish by the Parliament in the Amendment of the statute on 2001. The primary goal of the amendment is to protect the drug addicts from the drug trafficker.

The Parliament was intended to prevent the flooding of the drugs into the society, and also to protect the drug addicts. The amendment is very much important that it also amended the punishment according to the quantity of the drugs being handled by the offenders. Then, the intention of the Drug handler shall be observed and he should not be punished as like the drug trafficker. The drug addict must be observed and his intention for his personal consumption should be established and to make sure that the drug was not for the sale or distribution like

the drug trafficker as held in **Basheer @ N.P. Basheer vs State Of Kerala**<sup>1324</sup>.

Another detailed interpretation also required as there was some type of offenders who tends to be carrier and not the distributor or the manufacturer. The charges booked against those offenders shall be carefully determined by the Investigative agency. The Amendment carried out in the year 2001, interprets with the difference between the small and commercial quantity, and the punishment should be given according to the law, and no prejudice should be caused to the offenders.

In a case of a carrier, who carries a drug of quantity 60gms, was caught by the Police, later on trial, he was held for the maximum punishment of the statute. In accordance with that the 1<sup>st</sup> Appellant court also confirms the punishment and opinioned that nothing to interfere with the Trial court's order. The final appeal comes to the Apex Court, where the Apex Court carefully determined and found that the Appellant was just a carrier and not the kingpin.

The Apex Court also interpreted the ambiguity in the quantity, where the amendment states that the small quantity is around 5 gms where the commercial quantity should be around 250 gms. The Appellant was carrying an amount of 60 gms, which falls under the category Between the small and commercial quantity. It is also interpreted by the Apex court that the purity of the drug substances also an important criterion in deciding the sentence to the accused.

The purity of the drug should be taken into the account where the raw material used as a medium shall not be taken or calculated while measuring the drug. The raw drug's density is the primary factor in which it creates the medical complications for the consumer and it will be a threat to the society. Hence, the appellant was only a carrier and already imprisoned for 2 years, the imprisonment was reduced as he was possessing only a 60 gms of

<sup>1323</sup> Khet Singh v. Union of India, AIR 2002 SC 1450

<sup>1324</sup> Basheer @ N.P. Basheer v. State of Kerala, (2004) 3 SCC 659

pure drug substances and not the entire drug substances carried by him is an absolute drug and it was held in **E. Michael Raj vs Intelligence Officer**<sup>1325</sup>.

Hence, the interpretation between the drug addicts and the drug trafficker, and also one who carries it for some benefits and the one who is the manufacturer or the kingpin should be distinguished according to the guidelines of the Apex Court and not all the drug offenders should be treated as same.

### Preventive Detention under the Act:

The concept of the Preventive detention had also participated in the NDPS Act, where many offenders are taken into the Preventive Detention in order to prevent them from further flooding of drugs into the society. The preventive detention itself a violative of the Article 21 of the Indian Constitution, where the Detenue was taken into the custody of the State without any charges booked against the offender. The justification from the side of the State mainly contains that the previous, non-convictional history is stated as the primary factor for the preventive detentions.

The Preventive detentions are illegal in some point of view where the Offenders are mentally suffered and also physically harassed for a long period of time. It lies as an advantage of the State to take custody of such offenders, and prevent them from seeking justice. Many of the detenue tends to be in the detention and they are not capable of getting release from those trap in form of detention.

The Apex Court held that the preventive detention of an offender, who is already in the custody of the authority of the state, in order for the connection with the substantive law, where he is allegedly committed by him is well settled, in such cases the preventive detentions should not be ordered by the state. In other words, the state still can take the custody of the offender, if the state that the offender is likely to repeat the

same nature of offences, and the gravity of the alleged offences shall be determined.

It is also held that the person, who is in detention was devoid of the opportunity to being released, and also there are imminent possibility of being released, where the power of the preventive detention should not be exercised by the state. The detention authority ought to record the reasons for the detention of the offender and the authority should have strong believe that the offender, if shall be released, will cause prejudice to the state, on the event of non-cooperation, and the time in which the detention order is passed plays a vital role in the detention. The detention authority should have opinion that it has become imperative to detain the offender in detention, with a view to prevent him from further commitment of offences of similar nature.

In a judgment, the Apex Court held that In view of the legal position as stated above and in particular having regard to the fact that an order of preventive detention against a person passed at a time when that person is already in the custody of the State Authorities for commission of the Act under substantive law, is illegal unless there is possibility of immediate release of a person from custody in the substantive offence and there are compelling reasons for passing of the order of preventive detention. Such a situation is required to be reflected in the order of detention or the grounds of detention formulated by the detaining authority, as held in the **Manzoor Ahmad Khawaja vs State & Ors**<sup>1326</sup>.

### Reasonable Grounds for Bail:

A bail is very important factor in the protection of the offenders. The NDPS act laid down some stringent guidelines for an offender to be released on bail, which is also interpreted by the Apex Court in many cases. The Apex Court also had framed basic criteria for an offender to be released on bail. The judicial custody at the pre-trial period is very important for the

<sup>1325</sup> E. Michael v. Intelligence Officer, (2008) 5 SCC 161

<sup>1326</sup> Manzoor Ahmad Khawaja v. State, 2019 SCC Online J&K 579.

investigating authority, where they are indulged in the act of collecting the evidences and trying to corroborate it with the prosecution case.

Another important reason to be believed for the stringent conditions to be followed to release the offender in bail, is that to prevent the further flooding of the drugs into the society, if in case, the offender is a drug trafficker. But there are reasonable grounds for the offender to be release on bail. The main point for consideration is that the substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn, points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the NDPS Act, held by the High Court of Bombay in **Rhea Chakraborty - Vs- Union of India**<sup>1327</sup>.

The legislature was responsible for containing and preventing drug misuse in India, but the courts supplemented the legislative efforts to make India a drug-free society. The courts in Independent India were not hesitant to recognise the evil of drug usage and were not unaware of the need to implement measures to combat it within the scope of established law. The judges have not only attempted to deal with drug misuse cases within courtrooms, but they have also acted outside of courtrooms to take all necessary steps to eradicate this menace from our society. We must admire the judiciary's efforts in this regard. The courts recognise the importance of addressing drug abuse, but also recognise the potential for investigating agencies to abuse their powers. To prevent this, the judiciary has established guidelines to ensure proper investigation and prioritisation of cases. Second, where the laws adopted for this goal fail to accomplish the desired consequences due to poor language, the court has gone to the rescue of legislatures

by interpreting those laws in a way that finally yields the intended results.

## PRIMARY CAUSES OF ACQUITTAL IN NDPS CASES<sup>1328</sup>:

### 1. Contradiction in quantity seized

The Investigating Officer states that the forbidden material in large quantities was seized and sealed on the scene from the accused. However, during the trial, it was discovered that the seizure was of a lesser quantity. In the **Kalua v. State of Rajasthan** case, the inconsistent recovery of contraband substance violated Section 55 of the Act. Although the prosecution stated 403 grammes of illegal drugs were discovered, the FSL report listed up to 704 grammes. According to the verdict, the circumstances were sufficient to call into question the prosecution's case, and the accused was given the benefit of the doubt. In the case of **Dehal Singh v. State of Himachal Pradesh**<sup>1329</sup>, the police officer used an inaccurate weighing machine from a nearby grocery vendor during the recovery of a contraband substance, resulting in a 15-gram difference in weight during chemical analysis. However, this does not result in the trial being terminated. The accused claimed that the following is not in accordance with Section 55 of the Act, but the Court ruled that the tiny inconsistency about the accused's quantity should be ignored. Thus, the accused was found guilty of the offence. Thus, a slight alteration can be ignored, but a significant difference in the retrieved drug results in the end of the trial.

### 2. Contradictions in the depositions:

There are conflicts in the witnesses' depositions during the trial, hence the locations of recoveries/seizures are not proven in court. In the case of **Sayed Mohammad v. DRI**<sup>1330</sup>, the Court initially relied on the deposition of the witnesses, but during cross examination, the

<sup>1327</sup> Rhea Chakraborty v. Union of India, AIR ONLINE 2020 BOM 1252.

<sup>1328</sup> "Narcotic Drugs Traffic and Control in India", Shodhganga : A Reservoir of Indian Theses @ INFLIBNET, available at: <http://hdl.handle.net/10603/256998> (last visited on Apr. 20, 2024).

<sup>1329</sup> Dehal Singh v. State of Himachal Pradesh, 2010 ALLMR (Cri) 4014(SC).

<sup>1330</sup> Sayed Mohammad v. DRI, CrI. A. 535/2016



deposition appeared dubious and suspicious, so the Court set aside the accused's conviction and acquitted him based on the contradiction of the deposition of the witnesses. In **Jai Pal and Others v. State of Uttar Pradesh**<sup>1331</sup>, the Court ruled similarly due to contradictory witness depositions.

### 3. The witnesses turns hostile

The witnesses become hostile or there are conflicts in their testimony, and the recovery and seizure of the confiscated contraband from the accused is not proven in court. This has been observed in numerous cases using the Act in which witnesses became hostile. In the case of **Jitendra and Others v. State of Madhya Pradesh**<sup>1332</sup>, the Court overturned the accused's trial because the witness became hostile. Also, in the cases of **Devanpuri v. State of Madhya Pradesh** and **Vinod Namdeo v. State of Madhya Pradesh**, the witnesses became hostile and refused to assist the prosecution's case, resulting in the accused's acquittal.

### 4. Safe custody of the seized contraband

The safe custody of the seized contraband is not proven because there is no record of the seizures, samples obtained for resealing, and so on in the Malkhana register. This has happened multiple times. The trial was terminated due to the investigating Officer in Malkhana register's failure to ensure the secure keeping of the illegal drug. In the case of **State of Gujarat v. Ismail U Haji Pate**<sup>1333</sup>, it was contended that the prosecution had failed to demonstrate that the things it had taken were safely maintained. There was also no information as to who ordered the piece to be sent for medical inspection. Thus, the Court stated that the trial was not conducted in accordance with the law's procedures, and as a result of a violation of Section 55, the following conviction is set aside. In **Jugal Kishore v. State of Punjab**<sup>1334</sup>, the police officer deposited the recovered contraband

substance in the police malkhana instead of the judicial malkhana. This resulted in the acquittal of the accused due to noncompliance with section 55 of the Act during the trial.

### 5. Female accused not searched by female

Female accused searches female constables but does not search females. In some cases, such as **Amina v. Circle Inspector of Police**<sup>1335</sup> and **Sita Alias Kali Verma v. State of Uttar Pradesh**, a female was not searched by a female officer, resulting in a vitiated prosecution and the accused's acquittal. The Supreme Court also stated that failure to comply with the same breached Section 50(4) of the Act, jeopardising the process required to locate and seize the unlawful material.

### 6. No seal application

Failure to apply a seal to the illicit substance may also result in the trial being terminated. In the case of **Ouseph v. State of Kerela**, the seized illicit drug was unsealed for two months, raising concerns about impartiality. The Court ruled that keeping an item open for two months could lead to tampering, as required by section 55. As a result, the conviction was reversed. Furthermore, in the instance of **State of Rajasthan v. Bher Singh**, the prosecution failed to demonstrate that the seal on the seized contraband substance remained unbroken until its examination in FSL. The Court reiterated that the following is mandatory under Section 55 of the Act, and thus overturned the accused's conviction.

### 7. Non handing over of seal

The failure to pass up the seal to an impartial witness may also result in the accused's acquittal. In **Mohammed Muzam v. State**, the seal was not handed to an independent witness, and the prosecution did not have any independent witnesses. The investigation produced various problems, and the Supreme Court invalidated the trial for violating the Act's

<sup>1331</sup> Jai Pal v. State of Uttar Pradesh, 1996 SCC (Cr.) 1036

<sup>1332</sup> Jitendra v. State of Madhya Pradesh, 2003 Supp(3) SCR 918

<sup>1333</sup> State of Gujarat v. Ismail U Haji Pate, (2003) 12 SCC 291.

<sup>1334</sup> Jugal Kishore v. State of Punjab, RLW1978(Raj)123

<sup>1335</sup> Amina v. Circle Inspector of Police, 2001 (2) ALT Cri 546

procedures. Also, in **Ravinder Kapoor v. State**, the Delhi High Court ruled that one of the grounds that generated suspicion during the trial was the prosecution's inability to prove who received the seal. As a result, the handling of seals to independent witnesses is critical throughout an accused's trial.

The need of the hour is to strengthen and train police officials and other empowered officers in this regard by providing them with up-to-date knowledge of relevant statutes and legal provisions, as well as developing allied skills to effectively handle cases under the NDPS Act. Provide comprehensive knowledge of relevant statutes, rules, case studies, landmark judgements, and specialised protocols for searches, seizures, and investigations. This would also improve the experience of the investigating officers, so strengthening the police department<sup>1336</sup>.

Aside from the officials' lack of skill in accurately interpreting the provisions, their insufficient number can be attributable to the cases' pending status. To reduce wrongful acquittals, investigating agencies and officials must collaborate with the prosecution to ensure that the case is proven beyond reasonable doubts and that the accused is convicted. However, in the event of an acquittal, the Court must be satisfied with the prejudice caused to the accused, and the benefit of the doubt should be given to him only if it appears to be justified. The judiciary should seek to strike a balance between the two circumstances, and guarantee that an accused individual does not go scot-free simply because of some tiny procedural infraction that could have been overlooked<sup>1337</sup>.

#### JUDICIAL PRECEDENTS:

In **Ayyub Khan v. State of Maharashtra**<sup>1338</sup>, it was determined that a mere delay ipso facto in passing a detention order from the date of

committing the specific offence is not fatal, but if such delay is correctly explained, the detention order is not unconstitutional.

In the case of **Indrodeo Mahto versus State of Maharashtra**<sup>1339</sup>, the Hon'ble Apex Court ruled that if a detainee is apprehended after 10 months of absconding, failing to issue a proclamation under Sections 82 and 83 Cr.P.C. does not make the detention order illegal or mala fide.

In **Yakub Ibrahim Patel vs. Sh.Shool**<sup>1340</sup> The Mumbai High Court ruled that the detaining authority's consideration of the petitioner's release on bail, as well as the rejection of a bail application three weeks prior to the detention order, invalidated the petitioner's continued detention. In a case **Sumita v Union of India**<sup>1341</sup>, where detenu was already in jail, the Hon'ble Delhi High Court held that the mere fact of detenu's arrest in the past in some cases would not be sufficient to give rise to an inference or satisfaction that she was previously released on bail. There was no compelling evidence before the Detaining Authority from which it could be concluded that detenu was likely to be released on bail, necessitating the need to hold her. As a result, detention was deemed unjust.

If there is a delay between the detention order date and the arrest date, it raises doubts about the subjective satisfaction of the right to prevent the passage of a satisfactory order. This can render the arrest order invalid. The question of whether a delay is unfair depends on the specific facts and circumstances of each case, with no ambiguity<sup>1342</sup>.

There is a disagreement of view in the judgement of **Sanjay Kumar Agarwal vs Union of India**<sup>1343</sup> and **Noor Salman Makani versus State of India**<sup>1344</sup>, on the one hand and **Kamarunnissa**

<sup>1336</sup> "Narcotic Drugs Traffic and Control in India", Shodhganga : A Reservoir of Indian Theses @ INFLIBNET, available at: <http://hdl.handle.net/10603/256998> (last visited on Apr. 20, 2024).

<sup>1337</sup> "Narcotic Drugs Traffic and Control in India", Shodhganga : A Reservoir of Indian Theses @ INFLIBNET, available at: <http://hdl.handle.net/10603/256998> (last visited on Apr. 20, 2024).

<sup>1338</sup> **Ayyub Khan v. State of Maharashtra**, 1998 Bom.LR 348.

<sup>1339</sup> **Indrodeo Mahto v. State of Maharashtra**, AIR 1973 SC 1062

<sup>1340</sup> **Yakub Ibrahim Patel v. Sh.Shool**, 2003 Cri.L.J.1167 (Bom.).

<sup>1341</sup> **Sumita v. Union of India**, 2003 Cri.L.J.2928 (Delhi).

<sup>1342</sup> **P.L.J. Iqbal v. Union of India**, AIR 1992 SC 1900

<sup>1343</sup> **Sanjay Kumar Agarwal v. Union of India**, AIR 1990 SC 1202: (1990) 3 SCC 309.

<sup>1344</sup> **Noor Salman Makani v. State of India**, AIR 1994 SC 575 : (1994) 1 SCC 381.

vs Union of India<sup>1345</sup>, on the other hand, insofar as the ratio in both the former two cases The statement that the detainee is likely to be released on bail or will continue their illegal activities following release. Making an order of custody is adequate, but it should be preceded by the right to halt dependable material if there is a real risk of issuing detention on the lattice. If the material is released, it may have a negative impact on other activities, then it will have biased activities in all possibilities. Prior to the arrest order, these three decisions were made by two Supreme Court judges.

In Dharmendra Suganchand Chelawat versus Union of India<sup>1346</sup>, it was held:-

Based on the preceding rulings, it is possible to legally detain someone in custody. However, the basis for the detention must be demonstrated. (i) The custodial authority was aware that the detainee was already detained. (ii) The detention was warranted. Forced reasons for detaining someone already in custody require concrete evidence to justify the order on the basis can be fulfilled. (a) The detainee is likely to be released soon. (b) Given the nature of the detainee's previous activities, it is likely that they will engage in negative activities after release. It is necessary to prevent them from doing so.

However, when a prisoner is released on bail, his detention order becomes unconstitutional<sup>1347</sup>. Section 12 of the PIT & Acts Act of 1980 empowers the Central Government to cancel or amend a detention Order. Detenu used this ability by sending a representation to the Central Government. The Central Government's failure to consider the representation is a clear breach of the privilege provided by Article 22 (5) of the Indian Constitution and Section 12 of the PITNDPS Act.

According to the Calcutta High Court's decision in S.Mohammad vs. Assistant Collector, Customs, products forbidden by law cannot be

considered legal imports under the Act<sup>1348</sup>. In Shermal Jain vs. Collector of Central Excise, it was determined that tainted commodities could be confiscated without identifying the smuggler<sup>1349</sup>. Consignments of medicines or cosmetics in violation of Section 13 may be confiscated<sup>1350</sup>, and no court lower than that of a Metropolitan Magistrate or Magistrate of the 1st Class can try such offences which is punishable under section 13<sup>1351</sup>

### CONCLUSION:

The judiciary plays an important role in the interpretation and implementation of the NDPS Act, which aims to curb narcotic drug usage and trafficking. While the Act attempts to create harsh legal measures to combat drug-related offenses, the judiciary has frequently had to strike a balance between maintaining these provisions and ensuring that justice is administered in a fair and compassionate manner. Courts have interpreted the Act's provisions in various ways to address concerns such as proportionality in sentencing, the rights of the accused, and the significance of rehabilitation over punitive measures.

However, issues persist. The harshness of obligatory sentencing measures under the NDPS Act has frequently resulted in criticism of the legal structure, particularly in situations involving persons suffering from addiction. In certain cases, the judiciary has advocated for reforms that would allow for greater sentencing flexibility and a more nuanced approach to drug-related offenses, taking into account the socioeconomic and psychological elements that lead to drug misuse. Despite the judiciary's crucial role, the overall efficacy of the NDPS Act is determined not just by court interpretations, but also by wider systemic changes such as improved law enforcement methods, public awareness, and rehabilitation programs. Future amendments to the NDPS Act should aim to incorporate judicial suggestions for reform,

<sup>1345</sup> Kamarunissa v. Union of India, AIR 1991 SC 1640

<sup>1346</sup> Dharmendra Suganchand Chelawat v. Union of India, AIR 1990 SC 1196.

<sup>1347</sup> Jagdish Chander v. State, 2000 Cri.L.J. 3162 (Delhi) (DB).

<sup>1348</sup> S.Mohammad v. Assistant Collector, Customs, AIR 1970 Calcutta, P.134.

<sup>1349</sup> Shermal Jain v. Collector of Central Excise., AIR 1956 Calcutta, P.121.

<sup>1350</sup> The Drugs and Cosmetics Act, 1940. (Act No. 23 of 1940), s. 14

<sup>1351</sup> The Drugs and Cosmetics Act, 1940. (Act No. 23 of 1940), s. 15



promote more rehabilitation-focused initiatives, and ensure that the legal framework remains both effective and fair in addressing the complexities of drug abuse in India.

