



INDIAN JOURNAL OF  
LEGAL REVIEW

VOLUME 5 AND ISSUE 4 OF 2025

INSTITUTE OF LEGAL EDUCATION



## INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 5 and Issue 4 of 2025 (Access Full Issue on – <https://ijlr.iledu.in/volume-5-and-issue-4-of-2025/>)

### Publisher

Prasanna S,

Chairman of Institute of Legal Education

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

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## RIGHT TO FAIR TRIAL IN NDPS CASES: EXAMINING POLICE MISUSE OF INVESTIGATIVE POWERS

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**BEST CITATION** – TANAY KALIA & NIKUNJ SINGH YADAV, RIGHT TO FAIR TRIAL IN NDPS CASES: EXAMINING POLICE MISUSE OF INVESTIGATIVE POWERS, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 5 (4) OF 2025, PG. 538-554, APIS – 3920 – 0001 & ISSN – 2583-2344.

### ABSTRACT

This article examines with great concern the systematic withdrawal of fair trial rights in narcotic prosecutions under India's Narcotic Drugs and Psychotropic Substances Act of 1985, with particular emphasis on police abuses of investigative powers. The NDPS Act, framed to combat drug trafficking, grants considerable leeway to enforcement agencies with respect to warrantless searches, reverse burden of proof, and restrictive bail conditions conflicting in many instances with constitutional safeguards guaranteed to Article 21. This study analyzes procedural shortcomings, drawing from doctrinal analysis and a case law review based largely on the period between 2023 and 2025, regarding major and minor cases involving unlawful search (in violation of Section 50), fabricated evidence (Section 42), and coerced confession (Section 53). Judicial pronouncements such as *Pauline Nalwoga v. Customs* and *Lovepreet Singh Case* recount violations that have recurred against the backdrop of systemic failure in enforcing procedural safeguards. The pattern of intrusion into investigations, procedural formalisms, and structural deficits against the accused, especially when they are marginalized, that has emerged through the findings is dire. Over the years, courts have been attempting to correct this imbalance through sophisticated interpretations in favor of substantive justice as against procedural compliance. Yet, a lack of coherence in the jurisprudence and legislative inertia have kept holding the way for meaningful reform. The article urges for the amendment of statutes, initiation of independent monitoring bodies, early provision of legal aid, and measures for the integrity of evidence to ensure that the NDPS is executed in conformity with constitutional standards. Such reform is necessary, lest the deterrent spirit of the Act gets transformed into institutionalized oppression, offending personal liberties and the credibility of the criminal justice system in India.

**KEYWORDS:** NDPS Act, fair trial rights, Article 21, police misuse, reverse burden of proof, Section 50 compliance, procedural safeguards, judicial reform

### INTRODUCTION

The right to a fair trial stands as a cornerstone of justice, particularly in cases under the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), where severe penalties underscore the need for procedural integrity. Concerns over police misuse of investigative powers have raised questions about the

balance between law enforcement and individual rights, prompting a closer examination of this issue within India's legal framework. Enacted in 1985, the NDPS Act serves as India's primary legislation to combat drug trafficking and abuse, aligning with international commitments under treaties like the Single Convention on Narcotic Drugs. Its stringent

provisions, including harsh punishments and procedural relaxations for police, reflect a zero-tolerance approach. Amendments in 1988, 2001, 2014, and 2021 have reinforced its scope, yet these measures have also amplified the potential for misuse, placing fair trial rights under scrutiny.<sup>962</sup>

Fair trial rights invariably find a home in Article 21 of the Indian Constitution, which ensures that accused persons are given due process even in the most serious of charges under NDPS laws. Provisions that reverse the burden of proof under Section 54 and prescribes limits of bail under Section 37 go counter to established safeguards: presumptions of innocence. It, however, must be seen as a measure to contain procedural fairness against an overreaching investigation agency. This article attempts to discuss how police excess under powers conferred under Sections 41, 42, 50, etc., affects rights to a fair trial focusing on recent 2023–2025 judicial pronouncements. Thus, with particular instances of misuse and their consequences, it seeks to gauge the robustness of now envisaged safeguards in the Indian legal system, with special focus on their interplay between statutory authority and constitutional protections.

While an important tool against drug-related offences, the NDPS Act leaves Article 21 vulnerable to serious mischief through unchecked police discretion. Its obstacles to justice are well illustrated by cases such as *Pauline Nalwoga v. Customs* (Delhi High Court, 2024) and *Lovepreet Singh Case*<sup>963</sup> (Punjab and Haryana High Court, 2024). It argues for the requirement of radical forensic reforms at the prima facie level towards making the intended objectives of the Act compatible with the fair trial rights. This paper will discuss Indian jurisprudence with its changing dimensions, emphasizing the landmark cases given by the last two years. The case of *Mere Breach of S.52A*

*NDPS Act Not Fatal*<sup>964</sup>, decided by the Supreme Court in 2025, proves to be one of these while *State of Kerala v. Prabhu*, decided in 2024, is a case decided by the Supreme court. A contemporary view in an area that has far-reaching effects on the justice system is what this accomplishes.

## **LEGAL FRAMEWORK AND POLICE POWERS UNDER THE NDPS ACT**

The Narcotic Drugs and Psychotropic Substances Act of 1985 was enacted with the aim of consolidating and amending all existing laws relating to narcotic drugs. It is representative of India's obligation toward international conventions, such as the 1961 Single Convention on Narcotic Drugs, 1971 Convention on Psychotropic Substances, and 1988 UN Convention Against Illicit Traffic. The Act constitutes the authority for enforcement agencies to intervene in the illicit trafficking and abuse of narcotic substances. It has undergone several significant amendments: 1988 for empowering officers from multiple departments, 2001 for laying down the principle of proportionality in the sentencing, 2014 for allowing certain essential narcotic drugs, and lastly in 2021 for the rectification of the drafting anomalies.<sup>965</sup>

### **Section 41: Power to Issue Warrants for Search and Arrest**

Section 41 of the NDPS Act allows Magistrates and Gazetted Officers of the empowered department to issue warrants with respect to the search of premises or the person suspected of possessing narcotic drugs. The typical requirement of being in existence before a judicial authority in criminal procedure is represented by this provision. Such checks on arbitrary actions are needed to ensure that the investigations are initiated with a reasonable belief and judicial sanction. The Supreme Court

<sup>962</sup> Investigation and Trial in NDPS Cases: A Comprehensive Guide, *available at*: <https://www.thelawadvice.com/articles/investigation-and-trial-in-ndps-cases-a-comprehensive-guide> (Visited on February 17, 2025).

<sup>963</sup> (Punjab & Haryana HC, 2024).

<sup>964</sup> (2025).

<sup>965</sup> Jay S. Shah, "NDPS Act: To Vitiate Or Not To Vitiate: A Legal Conundrum Survives", *available at*: <https://www.lawfinderlive.com/Articles-1/Article100.htm?AspxAutoDetectCookieSupport=1> (Visited on February 18, 2025).



has held in *State of Punjab v. Balbir Singh*<sup>966</sup> that an infringement of the procedural safeguards laid down in the Act would deny the admissibility of evidence, and that includes Section 41. This section seeks to provide balance between the situations requiring immediate investigation and the accused's other rights.

#### **Section 42: Warrantless Entry, Search, Seizure, and Arrest**

Section 42 thus empowers specified officers to conduct search and seizure without warrant, conditional upon the compulsory writing of information and intimation to his superior within 72 hours. Searches include premises. The said clause is not for the search in public spaces but for conducting a search in buildings or enclosed places only. The rationale behind this provision is to permit prompt action in immediate, exigent situations while still providing a paper trail for judicial review. The Court in *Karnail Singh v. State of Haryana*<sup>967</sup> also held that while an explanation for the delay in compliance is warranted, absolute non-compliance is not permissible. Section 42 reflects flexible conditionality for enforcement.

#### **Section 43: Arrests and Seizures in Public Places Without Warrants**

Section 43, unlike Section 42, relates to searches and seizures conducted in public places, that is, on the streets, in parks, or on public transport. Such instances allow officers to search, seize, and arrest with no requisite warrant or prior paperwork. This provision stands to counter the mobile character of drug trafficking and the requirement for rapid action. The Court held that actions under Section 43 were valid if, broadly speaking, they conformed to procedure in the *State of Haryana v. Jarnail Singh*<sup>968</sup>. It adds to the lucidity of pragmatic flexibility needed at the ground level of enforcement in drug control.<sup>969</sup>

<sup>966</sup> (1994) 3 SCC 299.

<sup>967</sup> (2009) 8 SCC 539.

<sup>968</sup> (2004) 5 SCC 188.

<sup>969</sup> Harsh Bora, *Handbook of Landmark Judgments on Human Rights and Policing in India* 147 (Commonwealth Human Rights Initiative, New Delhi, 1st edn., 2020).

#### **Section 50: Conditions for Personal Searches**

Section 50 is a vital procedural safeguard necessitating that, before the search of a person (not premises) commences, the officer must tell the person they have a right to have the search conducted in the presence of a Gazetted Officer or Magistrate. This is a seriously non-trivial requirement. In *State of Punjab v. Baldev Singh*<sup>970</sup>, the Supreme Court held that punishment of non-compliance with Section 50 vitiates the trial. It is not applicable to the search of vehicles or containers or premises. It shows the legislators' concern for individual freedom against arbitrary interference with the body, especially in view of the heavy penalty under the Act.

#### **Section 53: Investigative Powers Equivalent to Police Officers**

Section 53 empowers both the Central and State Governments to confer on certain officers the powers of an officer-in-charge of a police station under the BNSS. This means these officers possess the power to investigate and record statements under Section 161 BNSS and file charge sheets. Such delegation is necessitated due to the specialized nature of narcotics enforcement that is carried out by non-police agencies, such as the NCB or Customs. In the *Union of India v. Shah Alam*<sup>971</sup>, it was clarified that these officers are not police officers for the purpose of Section 25 of the Bharatiya Sakshya Adhiniyam and therefore any confession made to them would be admissible.

#### **Section 54: Presumption from Possession (Reverse Burden of Proof)**

As far as Section 54 is concerned, the presumption of culpability exists in favor of the person under possession unless satisfactory evidence is produced for the reasons to explain such possession. This is in deviation from the general principle of criminal law, whereby, upon proof, one is required to be guilty. This makes

<sup>970</sup> (1999) 6 SCC 172.

<sup>971</sup> (2009) 16 SCC 644.

sense since gathering direct evidence on issues of drug-related offenses is very hard indeed. In *Mohd. Sahabuddin v. State of Assam*<sup>972</sup>, the court held that the prosecution had to first establish conscious possession, after which the burden shifted. The section, rather, proposes deterrence but requires a very close judicial analysis to prevent its misuse and wrongful conviction.

### Section 37: Stringent Bail Conditions

The passing of Section 37 undoubtedly goes a long way in ensuring that bail is granted under stringent conditions as far as cases of commercial quantities are concerned. Bail can be granted only on the satisfaction of the court that the accused person is not guilty and is also likely not to commit an offense during the bail period. This section creates deviations from the general BNSS bail norm. In *Union of India v. Rattan Mallik*<sup>973</sup>, the Court also reaffirmed that the satisfaction of the courts shall have to be recorded on both conditions. The provision is said to have a legislative purpose of denial of bail liberally in serious drug cases, which reflects the grave offense and impact on society.

### Comparison with BNSS: Stricter Framework under NDPS

The NDPS Act is tougher than the Bharatiya Nagarik Suraksha Sanhita. Under BNSS provisions, arrest and searching powers became broader judicial scrutiny and procedural safe guards. NDPS jumps over warrants for actions; it is reverse burden proof and restrictive bail provisions. Consumption instance, Section 50 of NDPS extends beyond general search procedures under BNSS because it mandates specific rights during personal searches. This deviation signifies public safety being given preference over individual liberty in drug offenses. The framework under NDPS aims at deterrence and often risks overreaching and breaching legal well-being.

### Analysis: Potential for Abuse of Police Powers

While NDPS Act equips officers with the necessary tools for dealing with drug offenses, its provisions lend themselves to misuse. Reverse burden, limited bail, warrantless searches, and presumptions work together in a nefarious fashion to create a powerful weapon susceptible to abuse: evidence which has been planted, coercion, and procedural loopholes abound; in fact, quite a number of investigations have no independent scrutiny, thus adding to the problem. Local average of other cases available in the market will always keep off-the-record information more in favor of misuse. All statements made by police officers under Section 53 should be treated as inadmissible evidence, as reaffirmed by a ruling in the case of *Tofan Singh v. State of Tamil Nadu*<sup>974</sup>, thus aggravating the risk of misuse. If they would still like to attain any credit, the policymakers have to develop a way in which accountability will be achieved without having diluted enforcement muscle.<sup>975</sup>

### RIGHT TO FAIR TRIAL: CONSTITUTIONAL AND STATUTORY FOUNDATIONS

Right to fairly trial is the bedrock to India's constitutional democracy. Each person accused of any offense must receive justice through a transparent, impartial, and timely process. This is not just a procedural right but extends to protection in substance, especially in cases of strict laws such as NDPS. Punishments and the stigma that follow with narcotic offenses make the need for a fair trial even more imperative. The judiciary has also kept on working on this right in consonance with the changing standards governed under law and social needs into the wider scope of Article 21 of the Constitution.

### Constitutional Basis: Article 21 and the Right to Fair Trial

No person shall be deprived of life or personal liberty except in accordance with a procedure

<sup>972</sup> (2012) 13 SCC 491.

<sup>973</sup> (2009) 2 SCC 624.

<sup>974</sup> (2020) 9 SCC 94.

<sup>975</sup> S.S. Upadhyay, *Laches in the Investigation of Crimes* 168 (Law Helpline, Lucknow, 1st edn., 2024).

established by law, as provided under Article 21 of the Constitution. The Supreme Court has interpreted this provision as including guarantees concerned with a fair trial. In *Maneka Gandhi v. Union of India*<sup>976</sup>, enough procedure was stated to be just, fair, and reasonable. The meaning of this includes rights such as innocence and access to legal counsel, as well as the right to speedy trial. These principles ensure that criminal prosecution remains a just process, rather than being treated as inherently punitive.

### ***Presumption of Innocence and Legal Representation***

The implication of the presumption of innocence, one of the primary rights concomitant to fair trial, is that unless he proves the guilt of an accused person beyond reasonable doubt, the accused has nothing to prove. This right empowers an accused to use the services of a legal counsel who can build an effective defense. On one hand, a landmark ruling in *Hussainara Khatoon v. State of Bihar*<sup>977</sup> 1980 1 SCC 81 confirmed that free legal aid is a right granted under Article 21, and, on the other hand, this exercise of these rights highlights the procedural foundation upon which the edifice of criminal justice rests. They act as a shield for the innocent against evil intent by the State while protecting against the possible miscarriage of justice made complex by law.

### ***Right to Speedy Trial***

The right to a speedy trial is of utmost importance so that long stays in custody may not continue and justice be dispensed without undue delay. Delay in investigations, framing of charges, or conducting trials can cause irreparable injury to the accused. The Supreme Court had addressed the case of undertrials with regard to NDPS cases languishing in jails in *Shaheen Welfare Association v. Union of India*<sup>978</sup>. The Court held that while the Act is stern, one must not sacrifice the procedural

fairness. A delayed trial is justice denied. The courts should balance the need for thorough investigation with the constitutional mandate of speedy adjudication.

### **NDPS Act Challenges to Fair Trial**

The NDPS Act was purposefully designed to do this in order to impose conditions that are more stringent than what is generally accepted under the fair trial standards. The reverse burden of proof and restrictive conditions for bail grants a prosecutorial advantage that tilts the scales. While these provisions are effective in restricting drug trafficking, they raise serious concerns about the erosion of constitutional safeguards. The accused is saddled with a dual burden of proving innocence as well as being able to justify his release while being often denied timely access to evidence and legal counsel. The measure is aimed at deterrence, but if not matched by stringent judicial scrutiny, it can become a tool of oppression.<sup>979</sup>

### ***Reverse Burden under Section 54 vs Presumption of Innocence***

Possession of narcotic substances under Section 54 of the NDPS Act puts the onus on the accused to explain satisfactorily the circumstances surrounding his possession. This runs counter to the constitutional guarantee of presumption of innocence. The ruling in *Noor Aga v. State of Punjab*<sup>980</sup> by the Supreme Court emphasized that the prosecution must first prove possession beyond a shadow of a doubt before the presumption could apply. The Court added that procedural safeguards herein must be fully complied with. Reverse onus should not therefore be allowed to dilute the guaranteed fundamental rights of the Constitution, particularly in light of personal liberty being at stake.

### ***Denial of Bail and Prolonged Detention under Section 37***

Bail for commercial quantities under Section 37

<sup>976</sup> (1978) 1 SCC 248.

<sup>977</sup> (1980) 1 SCC 81.

<sup>978</sup> (1996) 2 SCC 616.

<sup>979</sup> Standard Operating Procedure for Dealing Cases under NDPS Act 132 (Tripura Police Department, Agartala, 1st edn., 2024).

<sup>980</sup> (2008) 16 SCC 417.



of the NDPS Act will not be granted unless the court believes that the accused is not guilty or will not commit any offence if released. This standard is much harsher than the general bail provisions of BNSS. Courts have to apply their mind fully and record reasons while granting bail. In *Union of India v. Shiv Shanker Kesari*<sup>981</sup>, held so. Result? Several under-trials spend years in jail waiting for their trial to happen. This death without conviction is a direct blow to the right of the individual to have a fair and speedy trial.

### Judicial Interpretation: Article 21 and NDPS Safeguards

The courts have repeatedly intervened to bring the NDPS procedures in line with constitutional requirements. The Supreme Court in *State of Punjab v. Balbir Singh*<sup>982</sup> held that procedural violations in the NDPS Act could lead to the entire prosecution being declared void. The court reiterated that rule of law must prevail even for serious offenses. In *Tofan Singh v. State of Tamil Nadu*<sup>983</sup>, the court declared that confessions made to officers under Section 53 would not be admissible as evidence under the Bharatiya Sakshya Adhiniyam, thereby enhancing protections against coercive investigations. All of these decisions operate as a fortification of liberty against arbitrary actions of the state.<sup>984</sup>

### Balancing Enforcement with Individual Rights

The courts try to maintain a delicate balance between effective enforcement and individual rights. The arrest, said the Court in *Arnesh Kumar v. State of Bihar* (2014) 8 SCC 273, though not a case of NDPS, is not to be made automatically in regard to cognizable offense unless justified. This proposition was again brought into focus in the courts during NDPS bail hearings. Drug offenses may impose strict control, yet that very position does not sanction the denial of a fair procedure. Judicial oversight

is, thus, an important counter on the grant of wide powers under the NDPS Act and ensures that enforcement does not descend into oppression.

### Significance: Why Fair Trial Rights Matter in NDPS Cases

Convictions under NDPS entail serious adverse consequences, such as long-term imprisonment, ostracization from society, disparagement, etc. The accused are most often persons from marginalized communities with no means/ability to defend themselves. In that sense, fair trial rights cannot be seen as merely legal formalities but essentially as protections against irreparable damage. If the procedural safeguards are weak, the system runs the risk of punishing the innocent and losing its credibility in the public eye. Given the vindictive nature of penalties for NDPS offenses, it is even more crucial in these situations that all legal safeguards are accorded their rigorous observance. It is in these moments, when public opinion is at its strongest against them, that the courts must cling closest to due process and constitutional values. Justice must serve both the ends and the means equitably.

### INSTANCES OF POLICE MISUSE OF INVESTIGATIVE POWERS

The NDPS Act gives wide powers to investigating officers. If these powers remain unchecked, the potential for procedural abuse and miscarriage of justice occurs. Several cases have shown violations ranging from illegal searches to forced confessions. Each instance of such abuse gives rise to the disintegration of the rule of law as well as the delegitimization of the criminal justice system. Violation of mandatory requirements does not only interfere with personal liberty but also undermines public confidence in law enforcement. Strict compliance with the law is required to safeguard the interests of the accused. Sections 42, 50, and 53 also requires accountability when

<sup>981</sup> (2007) 7 SCC 798.

<sup>982</sup> (1994) 3 SCC 299.

<sup>983</sup> (2020) 9 SCC 94.

<sup>984</sup> Narcotics Control Bureau, *Drug Law Enforcement: Field Officers' Handbook* 224 (Ministry of Home Affairs, New Delhi, 1st edn., 2023).



procedural safeguards are violated.<sup>985</sup>

### **Illegal Searches and Seizures: Violation of Section 50**

According to Section 50 of the NDPS Act, a person who is searched must be informed of the right to be examined in the presence of a Gazetted Officer or Magistrate and failure to do so shall vitiate the trial. In *Pauline Nalwoga v. Customs* (2024), the Delhi High Court held the search illegal since the accused was not informed of her right nor offered the option of presence before a competent authority. The Court quashed the case despite the recovery of narcotics on procedural violation grounds. This shows that non-compliance with Section 50 can render the whole procedure null and void.

### **Consequences of Ignoring Section 50 Safeguards**

Section 50 is critical to avoiding arbitrary bodily intrusion. Officers must actually inform the accused and note it. A retrieval towards violation of this provision renders the recoverable evidence inadmissible in *State of Punjab v. Baldev Singh*<sup>986</sup>. The Supreme Court clarified that informing the accused is not an option but legal duty. In *Pauline Nalwoga's* case, the Court noted that such kind of procedural compliance is not some sort of mere formality; it makes sure that there should be no abuse and also ensures transparency. Bypassing procedures of this nature may become effectively unconstitutional with an above-high penalty when they occur.<sup>987</sup>

### **Fabricated Evidence: Planting Drugs and Falsifying Records**

Allegations of planting drugs or manufacturing recovery memos seriously impinge upon the credibility of law enforcement. The peculiarities arose in the *Lovepreet Singh Case*<sup>988</sup>, where

there were severe discrepancies in the records of the case diary, recovery memo, and witness statements. It appeared as if drugs were planted during a routine check, and those who testified for recovery were police personnel and not independent witnesses. The Court exonerated the accused on the basis that the evidence was tampered with. The provisions of Section 42 regarding giving written information to a superior officer had been flouted creating a mockery of the trial proceedings.

### **Record Falsification and Collusion in Investigation**

Section 42 expressly requires pre-recorded information in relation to such procedures. Falsely fabricating documents to justify a search or seizure is against the provisions of this section. In *Lovepreet Singh*, it was pointed out that the officers created documents of recovery after postdating entries to fit the prosecution's own lodged narrative after arrest. Recovery was not corroborated by any independent witness. The Court held that omission of unbiased observers portrayed mala fide intent. Statutory provisions are violated in this misuse and the spirit of fairness is also trampled under Article 21 of the Constitution. When enforcement agencies indulge in such brazen conduct, courts will have no option but to intervene to ensure that trials do not become processes of deception.

### **Coerced Confessions: Ignoring Tofan Singh Precedent**

Even after the Supreme Court's judgment in *Tofan Singh v. State of Tamil Nadu*<sup>989</sup>, where it ruled against confessions made to officers under Section 53 as inadmissible, police abuse these statements. The principle clarified that these officers are not considered as "police officers" under Section 25 of the Bharatiya Sakshya Adhiniyam but unlike other powers bestowed upon NDPS, have powers such as those with a station house officer rendering any confession inadmissible. Even so, some

<sup>985</sup> Pankaj Bajpai, "Illegal Detention By False Implication In NDPS Case Amounts To Abuse Of Power: Calcutta HC Directs State To Pay ₹2 Lakhs Compensation", available at: <https://www.verdictum.in/court-updates/high-courts/illegal-detention-by-false-implication-in-ndps-case-amounts-to-abuse-of-power-1476513> (Visited on February 20, 2025).

<sup>986</sup> (1999) 6 SCC 172.

<sup>987</sup> Human Rights: Best Practices Relating to Criminal Justice in a Nutshell 198 (National Human Rights Commission, New Delhi, 1st edn., 2023).

<sup>988</sup> (Punjab & Haryana HC, 2024).

<sup>989</sup> (2020) 9 SCC 94.

investigating officers coerce the accused into signing a previously drafted confession, which they later introduce as voluntary statements. This entirely circumvents the evidentiary safeguards by inviting a judicial reprimand.

### ***Psychological Pressure and Threat-Based Statements***

Defense attorneys in various NDPS cases alleged that their clients signed blank papers or signed confessions prepared by others under coercion. These blank papers are then later brought in the trial even though the verdict of Tofan Singh rendered this inadmissible. Judges have mentioned that the accused belong usually to the downtrodden sectors and have no knowledge about their rights. In such situations, reliance upon extra-judicial confessions amounts to an abuse of process. The law is clear that only confessions before a Magistrate are admissible in law. Continuous violation shows a pattern of the investigating officers been using a different approach of turning procedural safeguards into a back door for-warrantless convicts instead of lawful gathering of evidence.<sup>990</sup>

### ***Arbitrary Arrests: Misuse of Discretion***

The Aryan Khan case (2022) raised serious concerns regarding arbitrary arrest and detention under the NDPS Act. Although no drugs were found in personal possession, the Narcotics Control Bureau caught up on him through alleged WhatsApp chats. Later, the Bombay High Court found there was no conspiracy or possession grounds enough to justify the arrest. The warrantless arrests in public places are covered by Section 43 but must be judiciously exercised. The case has illustrated how easy one's personal liberty could be curtailed without substantial proof. The arrest must have clear actionable intelligence rather than vague suspicion or speculative digital evidence.

### ***Arrest Without Substance: Legal and Moral Concerns***

Here, there is that also arrest, without recovery or corroboration, which lessens just as effectively the credibility of an enforcement mechanism. In the case of Aryan Khan, the absence of any material recovery and traffic involvement raised eyebrows. The court stressed that on the part of the police, careful objective analysis is essential before an arrest can be made under the NDPS Act. Section 43, under which discretionary power is misused, leads to damages in reputation and traumatic psychological experiences for the accused. Blanket arrests on such absurd grounds indicate that there are some fundamental flaws in the system of investigation. Legal oversight is necessary to keep the broad latitude given to police from translating into unchecked power.<sup>991</sup>

### ***Evidence Tampering: Mishandling of Samples***

The chain of evidence collapses when there is mishandling or tampering of seized narcotics. Such was the finding of the High Court in a Delhi case for 2020 that the sealed packets were opened and resealed without proper justification, since they ought not to have been tampered with. The sample seal number in the forensic report did not match the one that had been prepared during the time of seizure. Such discrepancies point towards tampering and cast a shadow on the prosecution's case. As per section 55 of the NDPS Act, the seized items must be deposited in the nearest police station's malkhana under proper seal, failing which an explanation must be furnished. This act of noncompliance violates both the statute and the rules of evidence.

### ***Break in Chain of Custody and Its Implications***

Now, dependency of evidence in NDPS cases is on an unbroken chain of custody. Any rupture into it raises reasonable doubt about the identity and authenticity of the substance recovered. In this Delhi case, the defense

<sup>990</sup> Radhika Chitkara, "The Trials of Bail: Pre-Trial Presumption of Innocence Under the Unlawful Activities (Prevention) Act, 1967 and General Criminal Laws", 35 *NLSIR* 113 (2024).

<sup>991</sup> J.N. Barowalia, *Abhishek Barowalia, Commentary on The Narcotic Drugs and Psychotropic Substances Act 231* (Lexis Nexis, Gurgaon, 2nd edn., 2023).

contended, the seal affixed to the sample was altered without judicial authority. A lack of documentation and procedural lapse found censure from the court. Alteration of evidence not only violates Section 55 but also destroys the prosecution's case completely. Proper documentation and chain of custody are thus non-negotiable in trials where life and liberty are at stake.

### Analysis: Linking Misuse to NDPS Act Sections

Every instance of misuse discussed above refers to some specific statutory breach. Illegal searches are founded on violations of Section 50. Fabrication of evidence is due to a failure to comply with Section 42. Coerced confessions persist despite the limits under Section 53. Arbitrary arrests misuse Section 43. Evidence tampering violates Section 55. The NDPS Act provides very wide powers to officers but makes the mandatory observance of procedure the only real and effective safeguard against such powers becoming tools of harassment. Procedural safeguards are not ornamental; they are legal obligations. Only such rigorous enforcement of these provisions, along with judicial oversight, can prevent systemic abuses and ensure fair trials.<sup>992</sup>

### IMPACT ON FAIR TRIAL RIGHTS

The fair trial rights enshrined under Article 21 are extremely important for establishing justice in the area of criminal law. Yet, when the NDPS Act is put to use against drug-related crimes, it seems to create the circumstances under which these rights are forfeited. Procedural defects on occasion, overreaching into the civil rights of persons concerned, and misuse of investigatory processes throw the credibility of the prosecution into question and weaken the right of the accused to defend himself. In this respect, courts have, on several occasions, remarked upon the grave effect of poor investigations, unadmitted evidence, and abuse of presumption upon the interests of a fair trial.

These structural shortcomings therefore severely impede the individual liberty of people and distort the fundamental balance between the State's power and constitutional safeguards.

### Unreliable Evidence: Inadmissibility and Its Consequences

The presentation of inadmissible or wrongfully acquired evidence greatly interferes way in which trials are conducted and the results that they receive. Most times the courts come across procedural lapses like not complying with section 50 or 52A of NDPS Act, that cripple the prosecution case. *Mere Breach of S.52A NDPS Act Not Fatal*<sup>993</sup> (Supreme Court, 2025), said the Court—the word has not been provided above under applicable jurisdiction. It was held that failure to comply with Section 52A does not nullify the trial all together as long as the chain of custody is maintained. Yet the judgment put a caveat that every attempt has to be made for maintaining integrity of evidence. Where these safeguards have been breached, both the defense and the process of justice suffer irreparably.

### Loss of Evidentiary Credibility and Judicial Discretion

Indeed, the admission of evidence among irregularities in procedure imposes a caution duty on the court. Where evidence is tainted, a conviction based on such evidence is in violation of the fair trial standard. New cases, including the 2025 Supreme Court ruling, acknowledge as much. The test courts apply usually weighs the credibility of the evidence obtained against intended procedural perfection, and so less compliance reflects deep institutional disregard for statutory norms. The defense is left to contest pieces of evidence that should have never been admitted. The courts then Almighty prosecution interest has to be balanced with the sanctity of the trial.

<sup>992</sup> Yogesh V. Nayyar, *Commentary on The Narcotic Drugs and Psychotropic Substances Act, 1985 & PITNDPS Act, 1988* 174 (Whitesmann, Delhi, 1st edn., 2023).

<sup>993</sup> (2025).



### **Compromised Defense: Legal Aid and Access to Evidence**

The right to a fair trial is meaningless in the absence of adequate representation and access to materials pertinent to the case. Many a defendant in NDPS cases comes from a disadvantaged background, helpless to afford counsel. Though legal aid is a constitutional right, it is often delayed or denied. Also, police may restrict or delay access to material documents such as FIRs, seizure memos, and forensic reports, which go a long way in impairing formation of a defense. Courts have condemned such acts in various observations spanning over decades, including ones from recent cases in Kerala. Article 21 calls for not just representation but for meaningful representation obtained only through timely access to evidence and legal aid.<sup>994</sup>

#### ***Denial of Procedural Tools to the Accused***

There are often cases when defense attorneys bring up their complaints regarding incomplete files or, at best, poorly documented files. Crucial components- be it seizure witnesses, forensic or laboratory test results, or arrest memos- may be absent or exaggerated lying. Due to lack of supervision by the courts in the early stages, these disappearances go unchecked. Despite that, these people fail to counter the allegations that the prosecution throws against them effectively. Courts should monitor the ingress of legal aid lawyers, if not at the time of arrest, during custodial interrogation. Without these safeguards, trials are merely with their ceremony impolitic. The justice of the case is not met; he has to be given his chance to fight.

#### **Prolonged Detention: Arbitrary Arrests and Section 37 Bail Bar**

In NDPS Act Section 37, it sets a very grave standard for the granting of bail in offences but especially for the ones dealing with commercial quantity. The onus lies completely on the accused to prove non-guilt and that he is

unlikely to commit the offence again, which is virtually impossible at the pre-trial stage. This results in prolonged detention due to the need for extended periods of investigation, if weak or contrived evidence is being employed. The Kerala High Court states, in the False Implication in NDPS Cases of 2025, that bail must be granted to an undertrial who had been assumed guilty for two years without any evidence being adduced against him. For that court, namely, NDPS, mere suspicion devoid of any credible material shall not justify continued imprisonment.

#### ***Judicial Burden to Justify Detention***

The specific findings must be recorded to deny bail by the judges under Section 37. But, most of the orders are secretive, mere reiteration of the statute. This mechanical application completely de-grades judicial scrutiny. The Kerala High Court Case in 2025 had an order stating that bail cannot be denied indefinitely without any advancement in the trial or discovery of new evidence. Long periods of incarceration cause strain on prison resources and also infringe personal liberty. In addition to this, it weakens defense as the accused are separated from families and legal teams, as well as important documents. A fair trial cannot be guaranteed when the accused suffers keeping in custody presumed guilty without adjudication on facts.

#### **Presumption of Guilt: Section 54 and Fabricated Evidence**

The possession of narcotics alone is enough for presumptive guilt without proving otherwise (Section 54). It becomes a weapon against the innocent combined with false-recoveries or false-arrest memos. Mostly, in several cases in lower courts, the accused person did not succeed in rebutting the presumption as the burden of proof shifted in an unfair manner. The existence of fabricated evidence and inadequate documentation makes it impossible for the defense to disprove the presumption in

<sup>994</sup> R.B. Pal, *Saunmya Chanbe, Digest on NDPS Act, 1985* 263 (Lexman Publication, Delhi, 1st edn., 2023).

most of the instances.<sup>995</sup>

Now, courts have started laying down the principle that it will be incumbent on the prosecution to prove “conscious possession” before applying Section 54.

### ***Burden of Proof and Structural Disadvantage***

The presumption under Section 54<sup>996</sup> must be applied with constitutional safeguards. The accused, being mostly poor or illiterate, are incapable of disproving possession especially where documents are unilaterally prepared or forged. In these cases, the reverse burden becomes an injustice. Courts must insist that the prosecution meet some minimum standards before the burden shifts. The judiciary has already conceded that legal presumptions cannot infringe basic due process. Although deterrence was the aim behind Section 54, its operation without procedural fairness has only engendered structural disadvantages to the accused, thereby creating a milieu of presumed guilt rather than enabling fair adjudication.

### **Socio-Legal Impact: Disproportionate Effect on Marginalized**

NDPS cases overwhelmingly affect the poor, minorities, and migrants. These groups lack resources to undertake years of legal battles. They are more likely to face coercive police action and are often denied legal assistance in a timely manner. Various legal aid studies have shown that most NDPS undertrials were from poor backgrounds. The burden of law along with structural poverty pushes their chances of false implication. Marginalized people are likely to be subjected to social ostracism long before any judicial finding. Even if acquitted, a drug-related arrest remains a stigma that hinders job prospects, housing, and standing in the community.

### ***Long-Term Consequences of Conviction or Prosecution***

Even if a person is innocent under laws pertaining to the NDPS Act, social and economic stigma attaches to that person for an indefinite period. Families live in disruption, children may be bullied at school, and members of the community shun the accused. This presumption of innocence does not make any difference in social perception. The mere fact that a person is back on bail does not remove the stigma. A conviction sets in motion mandatory sentencing, which leads to loss of livelihood. Such cascading effects make the NDPS process punitive in ways that are independent of legal punishment. The courts need to account for these effects when stringent sections are invoked. Reform of the law and discretionary power of the judicial system must provide relief against cyclical incarceration and marginalization that is an affront to the very foundation of justice.

### **JUDICIAL RESPONSES: RECENT CASE LAWS**

Judiciaries have played a pivotal role in interpreting the NDPS Act in consonance with constitutional rights, as well as clarifying procedural mandates and misuse detection, while also enhancing the right to a fair trial. However, it also reveals inconsistencies in enforcement and interpretation. Examining recent case law helps demonstrate how courts have tried to balance the NDPS Act’s stringent provisions with the fundamental rights provided under Article 21. These judgments can be said to form an evolving judicial philosophy, demanding strict procedural compliance, while at the same time being alert to the serious consequences of drug-related offenses.

### **State of Kerala V. Prabhu (2024): Scope of Section 50**

This 2024 judgment of the Kerala High Court, in *State of Kerala v. Prabhu*, reasserted that Section 50 of the NDPS Act applies only to the personal search of individuals and not to vehicles, containers, or premises. In this case,

<sup>995</sup> P.M. Bakshi, *The Narcotic Drugs and Psychotropic Substances Act, 1985 with Rules 192* (Asia Law House, Hyderabad, 1st edn., 2021).

<sup>996</sup> The Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985), s. 54.

the recovery of narcotics was from a backpack in a public place, with the prosecution contending that the search was not subject to the requirements of Section 50. The Court endorsed this interpretation, highlighting the Supreme Court's ruling in *State of Himachal Pradesh v. Pawan Kumar*<sup>997</sup>. The judgment further distills pertinent procedural distinctions and clarifies related practices on searches.

### **Judicial Clarity on Search Classifications**

While one type of search either enters the premises or enters the bodily premises, the Prabhu judgment makes a sharp division between different types of searches. According to it, if non-personal searches are included in the fold of Section 50, it will become diluted and impose unnecessary restrictions upon field officers. The line of argument is also supported with *Vijaysinh Chandubha Jadeja v. State of Gujarat*<sup>998</sup>, which emphasized that Section 50 should strictly apply to body searches only. This judgment thus reiterates the fact-managing procedural safeguards while extending them beyond limits, hindering enforcement unnecessarily. This clarity would also provide more uniform application of the law and protect investigations from being invalidated strictly on technical misapplications.

### **Pauline Nalwoga V. Customs (2024): Critique of Pre-Typed Search Forms**

In the case of *Pauline Nalwoga v. Customs* (2024), the Delhi High Court laid waste to the validity of a search-and-seizure operation through the usage of pre-typed forms. The accused was not sufficiently informed about her rights under the Section 50 of the Najib Penal Code. The Court observed that the use of the usual templated format in NDPS procedures poses a serious possibility for mechanical compliance. There has to be genuine communication with the accused, including verbal and recorded explanations of their rights. The Court further held that procedural compliance must be real and not just a

formality on paper, and thus quashed the case for which there was a violation.

### **Warning Against Procedural Formalism**

This ruling by Nalwoga warns against turning constitutional safeguards into mere administrative check-boxes. According to the Court, the suspect had simply signed that pre-filled form which carried neither timestamp nor any kind of witness verification. The judgment was that she did not have any record of having been offered the option of having a search before a Gazetted Officer or Magistrate. It emphasized that procedural safeguards were not rituals but rights with substantive content-in-charge of meaningful communication between the enforcement agency and the suspect, while scrutinizing documentation by the courts. This ruling encourages more responsible enforcement and condemns the judiciary's intolerance toward superficial compliance with essential safeguards.

### **Lovepreet Singh Case<sup>999</sup>: False Implication and Record Tampering**

Indeed, there have been serious misconducts observed by the Punjab and Haryana High Court in the case of *Lovepreet Singh* (2024) into police in an NDPS case. The court found that narcotics had indeed been planted on the accused, while documents like the seizure memo and recovery report were manufactured. Relying on the contradictions between the case diary and witness statements, the Court found such fabrication to be subject. The findings were that conduct of this sort violated rights under Article 21 and threw out the case. This judgment by the Court illustrates the ever-increasing vigilance of courts towards false implication and abuses of process in narcotic cases.

### **Document Integrity and Independent Verification**

The court in the *Lovepreet Singh case*<sup>1000</sup> highlighted the fact that there were no independent witnesses during the search and

<sup>997</sup> (2005) 4 SCC 350.

<sup>998</sup> (2011) 1 SCC 609.

<sup>999</sup> (Punjab & Haryana HC, 2024).

<sup>1000</sup> (Punjab & Haryana HC, 2024).



there was a considerable time delay in sending the samples for forensic examination. The judgment found the prosecution's case deficient in explaining these gaps. It called for mandatory inclusion of independent witnesses and real-time documentation. Fabrication vitiates the public presumption that public officers act lawfully. The Court again held that the burden for proving compliance with the procedures falls on the shoulders of the prosecution. This ruling emphasizes that courts are not mere arbiters but aggressive defenders of constitutional rights when procedural sanctity is questioned.

#### **Mere Breach of Section 52A NDPS Act Not Fatal : Evidentiary Chain Focus**

In *Mere Breach of Section 52A NDPS Act Not Fatal*, the Supreme Court examined the impact of non-compliance with Section 52A. The facts of the case involved non-forwarding of seized material to the magistrate, delayed forwarding, and storage issues. The Court found that the breach of Section 52A is not fatal if the prosecution establishes an unbroken chain of custody because the evidence is more important than procedure. The failure to comply will turn the focus away from strict procedural benchmarks to the more general question of whether the evidence remains credible, authentic, and verifiable.

#### **Balancing Technical Compliance and Substantive Justice**

The judgment of the Supreme Court was aimed at avoiding the acquittals of offenders just on the basis of legal technicalities and in keeping the evidence credible. Great faith should be exhibited by the prosecution in the attempts made for the preservation of the evidentiary quality. Unlike the lapses which would cause prejudice to the accused, the Court felt that those lapses should not cost the trial. The justice system would be over-techned but will still be maintained for those safeguards which are really required. It is to prevent an abuse of procedural lapses while nurturing careful documentation. This gives a good balance,

practical between the careful compliance and the substantive fairness needed for thorough and complicated NDPS prosecutions.

#### **False Implication in NDPS Cases : Kerala HC on Procedural Abuse**

False Implication in NDPS Cases: The Court granted bail considering the petition after two years of extended incarceration by a prisoner. The defense produced evidence showing procedural irregularities in that it did not comply with Section 42 and was devoid of independent witnesses; furthermore, the seizure record was contradictory. The Court ruled that such fraudulent procedure in the investigation could only be construed as false implication, and therefore the accused was granted bail. In this regard, it noted that grossly excessive delay, coupled with dubious modes of investigation, infringed the accused's rights under Article 21. It has reaffirmed the rights to speedy trial and conduct of fair procedures in respect of all drug-related prosecutions.

#### **Judicial Condemnation of Investigative Excesses**

The Kerala High Court condemned the use of NDPS Act's harsh provisions as means of oppressing the citizens instead of instruments of justice in investigating the case. The court insisted that a failure to abide by law cannot justify claims of public interest or national security later on. The caution, as cautioned in the judgment, was that state courts must look beyond the esoteric charge to the procedural narrative that supports each fold of the case. The fact remained in favor of the principle that legality in investigation is not optional. In situations where false implication is alleged, courts are to guard individual liberty by applying a higher threshold of scrutiny.

#### **Analysis: Judicial Trends and Inconsistencies**

The verdicts delivered recently clearly show a judicial effort to reinforce the constitutional guarantees at the interpretative task of the NDPS Act. The courts have been emphasizing the meaningfully complied sections like 42, 50

and 52A, they have condemned it as mechanical enforcement. There is also a move towards substantive evidence over and above the technical lapses as shown in 2025 in the Supreme Court ruling. But gaps still remain. Some courts hold on to the strict literal interpretation while another group would make allowance for procedural lapses if the evidence is worthy of credence. There is uncertainty both for law enforcement and for defense because of it. The need of the hour is uniformity in the interpretative standard so that predictability and fairness are there.

### ***Need for Doctrinal Coherence in NDPS Jurisprudence***

Being more punitive in nature, it demands consistent and principled application by the judiciary. Inconsistent interpretations create loopholes for enforcement, thus undermining the credibility of the justice delivery system. The growing trend toward rights-based interrogation is commendable, but it should be applied uniformly. Doctrines of fair trial should not depend on the forum in which they are enforced or the stage of litigation at which they are employed. A coherent framework in which statutory objectives weigh against constitutional mandates is in dire need of establishment. This will include regular judicial training, tailored procedural adherence instructions, and greater appellate court direction. Only through doctrinal consistency can the judiciary keep the NDPS Act firmly rooted in justice while simultaneously respecting the liberty of a person.

### **SUGGESTIONS**

Structural and procedural reforms have to be implemented in the NDPS Act for constitutional guarantees while effectively controlling drug-related crimes. Justice can be ensured by addressing the enforcement excesses and procedural inconsistencies. These are the suggestions to return the balance back between the State power and the rights of individuals, without exempting the Act from its objectivity as a deterrent. These focus primarily

upon procedural compliance, legal safeguards, and institutional accountability regarding the NDPS regime towards principles of due process.

### **Amend Section 54 to Narrow Presumption Scope**

The reverse burden clause under Section 54 should be altered so that it is operative only after the prosecution beyond a reasonable doubt has established conscious possession. In *Noor Aga v. State of Punjab*<sup>1001</sup>, the courts have warned against such automatic invocation. There should be a clearer legislative framework wherein the prosecution is first required to establish the knowledge and control of the accused over the alleged substance before any presumptions can be drawn. This would prevent their misuse in cases involving doubtful or planted recoveries and preserve the presumption of innocence, a set standard in fair trial rights under Article 21.

### **Make Compliance with Section 50 Mandatory Without Exceptions**

The legislature needs to ensure that compliance with section 50 is made compulsory, which would have to be shown through contemporaneous documentation. In *State of Punjab v. Baldev Singh*<sup>1002</sup>, the apex court reiterated that it is non-negotiable to inform the accused of his right to have the search made before a Gazetted Officer or Magistrate. Police officials should receive training so that they understand this provision and apply it properly. There should be uniform procedure for informing and recording the response of the accused to avoid ambiguity and prevent manipulation in procedure.

### **Introduce Independent Witnesses as a Statutory Requirement**

Investigation or searches or arrests as contemplated under the NDPS Act should be conducted in the presence of independent witness so as to have an element of transparency and minimize the chances of

<sup>1001</sup> (2008) 16 SCC 417.

<sup>1002</sup> (1999) 6 SCC 172.

fabrication. In *love Preet singh Case*, the absence of any non-police witnesses led to a finding of false implication. Statutory amendment in this regard should require the presence of not less than two independent witnesses during every seizure and the consequences thereof to be laid out for noncompliance unless adequately explained. Their statements should be contemporaneously recorded and presented along with the primary documents of the case for prosecutorial integrity.

### **Ensure Early Legal Representation and Access to Documents**

Accused persons should be provided legal representation from the earliest, optimally at the point of arrest or prior to custodial interrogation. Courts recognized legal aid as an integral part of Article 21 in *Hussainara Khatoon v. State of Bihar*<sup>1003</sup>. Such laws must specify that legal aid lawyers should be assigned within 24 hours of arrest and should be given complete access to all case materials. Such a cause will ensure that the accused iron out all their statements with counsel before any making, to prevent it from being made under pressures and also ensure that proper procedural fairness is achieved.

### **Revisit Section 37 to Relax Bail Conditions for Undertrials**

There should be graded criteria with respect to the quantity, strength of evidence and stage of trial for the bail restrictions prescribed under Section 37. In *Union of India v. Shiv Shanker Kesari*<sup>1004</sup>, the Supreme Court recognized the need for judicial discretion in applying bail bars. Amendments should include conditional bail for undertrials who have spent significant time in jail without charge framing or trial commencement. This will lead to an end to indefinite incarceration as it goes with the right to personal liberty, thus decongesting prisons and preventing injustices pre-trial.

### **Mandate Time-Bound Disposal of NDPS Cases**

There has to be set particular periods for investigation, filing of charge-sheets and concluding trial in an NDPS-related case for a legislature. Any failure to meet the above deadlines, unless for a reasonable cause, should attract judicial scrutiny or right to bail. As per the Supreme Court ruling in *Shaheen Welfare Association v. Union of India*<sup>1005</sup>, speedy trial is a must. Procedural delays due to the inefficiency of the prosecution or the backlog with the courts affect not only the deterrent function of punishment but also its moral purpose. A streamlined schedule with accountability mechanisms will ensure prompt adjudication and prevent excessive detention without conclusion.

### **Install a Digital Case Monitoring System for Chain of Custody**

A digital tracking system should be installed to monitor narcotics starting from seizure to forensic examination and court presentations. This will deter tampering, loss, or replacement of samples, an issue that has been of primary concern in cases such as the sample mishandling incident in Delhi in 2020. There should be QR-coded packets as well as time-stamped updates and automated alerts to strengthen the evidentiary value. The courts must swear by the chain of custody norms and admit evidence only when a chain of custody has been proved by clear digital audit trails, which are maintained by custodians wholly independent of interest.

### **Penalize Officers for Procedural Violations**

The officers will have to face punitive disciplinary and criminal action for deliberate procedural misconduct like false recovery, fabricated evidence, or unlawful confession. The statutory provision imposing penalties or departmental action for such violations may deter an abusers. In *Tofan Singh v. State of Tamil Nadu*<sup>1006</sup>, the Court denounced these

<sup>1003</sup> (1980) 1 SCC 81.  
<sup>1004</sup> (2007) 7 SCC 798.

<sup>1005</sup> (1996) 2 Sec 616.  
<sup>1006</sup> (2020) 9 SCC 94.



practices in taking coercive confession. Instituting internal oversight mechanism within the enforcement agencies and empowering judiciary bodies to recommend action against erring officers will promote accountability and legalities application at the ground level.

### **Include Forensic and Legal Experts in Investigative Teams**

NDPS investigations would, therefore, involve forensics and legal advice to accommodate procedural validity. Evidence mishandling can be prevented by the technical experts, and the legal advisers, by permitting compliance from statutory requirements on search, seizure, and confession. Interdisciplinary teams become less dependent upon police interpretations alone and establish a larger environment for the enforcement to be legitimate. Training in this area must also be reviewed in conjunction with representatives from the judiciary and legal aid agencies and from forensic agencies to guarantee proper application of the law.

### **Launch Rehabilitation-Oriented Provisions for First-Time Users**

The amendments, especially in first-time or small-quantity offenders, should differentiate drug users from traffickers. The courts recommend a shift to the idea of decriminalization to allow the accused to undergo treatment that is related to health. Diversion schemes, including community service, medical treatment, and counseling, can help alleviate the burden on courts and correctional institutes. Current provisions do not really distinguish, leading to an over-criminalization. A special adjudicatory forum for minor offences with rehabilitation, instead of incarceration, for the offender will bring NDPS Act in line with the best international practices in harm reduction and public health.

### **CONCLUSION**

The fair trial rights of the NDPS Act shows an incessant and disturbing conflict between stricter enforcement of drug laws and the rights guaranteed under the Indian Constitution in

Article 21. Probably the very structure of the Act, including provisions like Sections 42, 50, 54, and 37, builds up an enforcement regime so tilted against the accused that this balance in favor of the law turns even more crooked when the accused belong to socially disadvantaged sections. The Act is justified to serve the function of public safety, but violations of its very provisions and breach of due processes have become commonplace, with acts varying from warrantless illegal searches to coerced confessions and fabrication of evidence. When the judiciary intervenes in cases like *Pauline Nalwoga* and *Lovepreet Singh Case*, this was an effort to push back against far-reaching enforcement policy in conformance with constitutionalism, but such attempts only highlight structural aspects that continue to unravel justice. The coalescence of police excesses on the one hand and rigid statutory provisions on the other is increasingly preventing a fair trial from being realized, particularly the presumption of innocence, access to legal counsel, and protection against arbitrary detention.

While the most recent judicial interpretations provide some modicum of a corrective approach, they highlight the dire need for comprehensive reform imbuing the NDPS Act into its very implementation. The Act's deterrent purposes cannot substitute with the substantive attainability of justice and due process. Courts have rightly frowned upon procedural formalism while urging substantively fair trials; however, absent legislative backing and institutional accountability, the risk is very high that these protective provisions may remain aspirational. Aside from remedies to the problem of the structural injustice inherent in the Act, especially with the reverse burden of proof and onerous bail considerations, amendments will be necessary to offer individuals with an impetus to defend himself properly. The NDPS regime can be reclaimed to fit within India's constitutional commitment to fair honor and dignity through concerted jurisprudence, preserved procedure, and

enforcement grounded in principles.

#### BIBLIOGRAPHY

- Harsh Bora, *Handbook of Landmark Judgments on Human Rights and Policing in India* (Commonwealth Human Rights Initiative, New Delhi, 1st edn., 2020).
- Human Rights: Best Practices Relating to Criminal Justice in a Nutshell (National Human Rights Commission, New Delhi, 1st edn., 2023).
- Investigation and Trial in NDPS Cases: A Comprehensive Guide, available at: <https://www.thelawadvice.com/articles/investigation-and-trial-in-ndps-cases-a-comprehensive-guide> (Visited on February 17, 2025).
- J.N. Barowalia, *Abhishek Barowalia, Commentary on The Narcotic Drugs and Psychotropic Substances Act* (Lexis Nexis, Gurgaon, 2nd edn., 2023).
- Jay S. Shah, "NDPS Act: To Vitiate Or Not To Vitiate: A Legal Conundrum Survives", available at: <https://www.lawfinderlive.com/Articles-1/Article100.htm?AspxAutoDetectCookieSupport=1> (Visited on February 18, 2025).
- Narcotics Control Bureau, *Drug Law Enforcement: Field Officers' Handbook* (Ministry of Home Affairs, New Delhi, 1st edn., 2023).
- P.M. Bakshi, *The Narcotic Drugs and Psychotropic Substances Act, 1985 with Rules* (Asia Law House, Hyderabad, 1st edn., 2021).
- Pankaj Bajpai, "Illegal Detention By False Implication In NDPS Case Amounts To Abuse Of Power: Calcutta HC Directs State To Pay ₹2 Lakhs Compensation", available at: <https://www.verdictum.in/court-updates/high-courts/illegal-detention-by-false-implication-in-ndps-case-amounts-to-abuse-of-power-1476513> (Visited on February 20, 2025).
- R.B. Pal, *Saumya Chaube, Digest on NDPS Act, 1985* (Lexman Publication, Delhi, 1st edn., 2023).
- Radhika Chitkara, "The Trials of Bail: Pre-Trial
- Presumption of Innocence Under the Unlawful Activities (Prevention) Act, 1967 and General Criminal Laws", 35 *NLSIR* 113 (2024).
- S.S. Upadhyay, *Laches in the Investigation of Crimes* (Law Helpline, Lucknow, 1st edn., 2024).
- Standard Operating Procedure for Dealing Cases under NDPS Act (Tripura Police Department, Agartala, 1st edn., 2024).
- The Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985), s. 54.
- Yogesh V. Nayyar, *Commentary on The Narcotic Drugs and Psychotropic Substances Act, 1985 & PITNDPS Act, 1988* (Whitesmann, Delhi, 1st edn., 2023).