

PROCEDURAL SAFEGUARDS UNDER THE NDPS ACT AND THEIR JUDICIAL INTERPRETATION: BALANCING DRUG CONTROL WITH CONSTITUTIONAL GUARANTEES IN INDIA

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ABSTRACT:

The Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) represents the main legal instrument which regulates narcotic drugs and psychotropic substances in India. Being designed to deal with the threat of drug trafficking and drug abuse, the Act imposes severe punishments along with bail restrictions and wide search and investigation powers. Being aware that such special powers could be misused, the lawmakers provided for certain safeguards relating to search, seizure, arrest, detention, taking samples, custody of seized material and presentation of evidence.

*The Indian Supreme Court has always stressed that stringent provisions made under the NDPS Act should be matched with strict observance of the procedures prescribed for the same. The interpretation of various laws by the judiciary has resulted in turning those provisions into constitutional guarantees that are related to Articles 14, 20(3), and 21 of the Indian Constitution. In cases such as *State of Punjab vs. Balbir Singh*, *State of Punjab vs. Baldev Singh*, *Karnail Singh vs. State of Haryana*, *Vijay Singh Chandubha Jadeja vs. State of Gujarat*, and *Tofan Singh vs. State of Tamil Nadu*, various judicial principles relating to procedural compliance under the NDPS Act were laid down.*

The present study seeks to analyze the procedural safeguards provided in Sections 42, 43, 49, 50, 50A, 52, 52A, 55, 57, and 67 of the NDPS Act. It also analyzes constitutional aspects, judicial precedents, issues regarding evidence, and the international comparison of similar issues. In conclusion, the paper emphasizes that procedural safeguards are not just procedural requirements but are also constitutional requirements necessary to ensure that the war against drug trafficking is conducted in accordance with law.

Keywords: NDPS Act, Procedural Safeguards, Search and Seizure, Fair Trial, Constitutional Rights, Drug Control, Criminal Justice.

1. INTRODUCTION:

Drug trafficking has become one of the most prominent transnational crimes in recent times.⁶⁴⁸ Not only is it detrimental to the public health system, but it also erodes governance structures, promotes organized crime and

causes national security problems. The strategic location of India, being between the 'Golden Crescent' that comprises Afghanistan, Pakistan, and Iran, and the 'Golden Triangle' made up of

⁶⁴⁸ UNODC, *World Drug Report 2024* (2024).

Myanmar, Laos, and Thailand, puts India in the midst of numerous drug trafficking issues.⁶⁴⁹

In order to cope with these issues, as well as to fulfill its international commitments, an act known as the Narcotic Drugs and Psychotropic Substances Act, 1985⁶⁵⁰ was passed by Parliament. This law amalgamated various provisions and formed an effective legislation dealing with narcotic drugs and psychotropic substances. While other criminal legislation provides light penalties, the NDPS Act, being a special law, provides harsher sentences such as rigorous imprisonment of up to twenty years and hefty fines.

These strict clauses require equally strict procedures to be followed. Since the conviction of offenses committed under the NDPS Act is dependent on evidence collected from search and seizure operations and confession statements, it is imperative that procedural guarantees help in maintaining the process of criminal justice. These procedural guarantees also prevent any abuse of the law during the process of investigation.

2. CONSTITUTIONAL BASIS OF PROCEDURAL SAFEGUARDS:

The procedural safeguards contained in the NDPS Act derive constitutional legitimacy from the fundamental rights guaranteed under the Constitution of India.

Article 14⁶⁵¹ guarantees equality before law and prohibits arbitrary state action. Investigative powers exercised under the NDPS Act must therefore conform to standards of reasonableness and non-arbitrariness.

Article 20(3)⁶⁵² provides protection against self-incrimination and ensures that no person accused of an offence can be compelled to be a witness against himself. This constitutional

protection assumes particular significance in relation to statements recorded under Section 67 of the NDPS Act.

Article 21⁶⁵³ guarantees that no person shall be deprived of life or personal liberty except according to procedure established by law. Judicial interpretation has expanded Article 21 to require that such procedure must be fair, just, and reasonable.

In *Maneka Gandhi v. Union of India*⁶⁵⁴, the Supreme Court fundamentally transformed constitutional jurisprudence by holding that any procedure affecting personal liberty must satisfy standards of fairness, reasonableness, and non-arbitrariness. This principle has subsequently influenced judicial interpretation of procedural safeguards under special criminal statutes including the NDPS Act.

Similarly, in *Selvi v. State of Karnataka*⁶⁵⁵, the Supreme Court emphasized the importance of individual autonomy, dignity, and protection against compelled self-incrimination. The judgment reaffirmed that investigative efficiency cannot override constitutional guarantees.

The constitutional framework therefore requires courts to balance the objectives of drug control with protection of fundamental rights.

3. SEARCH AND SEIZURE SAFEGUARDS:

3.1 Section 42: Search of Building, Conveyance and Enclosed Place:⁶⁵⁶

Searches without warrants on the basis of reliable information relating to offences under the narcotics law can be carried out by authorized officers under Section 42. However, there are certain necessary procedural conditions that apply here.

⁶⁴⁹ Ministry of Home Affairs, Government of India, *Annual Report 2023–24*.

⁶⁵⁰ The Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985).

⁶⁵¹ The Constitution of India, art. 14.

⁶⁵² The Constitution of India, art. 20(3).

⁶⁵³ The Constitution of India, art. 21.

⁶⁵⁴ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

⁶⁵⁵ *Selvi v. State of Karnataka*, (2010) 7 SCC 263.

⁶⁵⁶ The Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985), s. 42.

The officer is required to put the information in writing and convey it to his superiors. This requirement ensures a proper record which would later be subject to judicial scrutiny.

In *State of Punjab v. Balbir Singh*⁶⁵⁷, it was decided by the Supreme Court that recording information in accordance with Section 42 is essential and its violation could significantly impact the prosecution's case.

Further discussion on the matter occurred in *Abdul Rashid Ibrahim Mansuri v. State of Gujarat*⁶⁵⁸, wherein it was clarified by the Court that total non-compliance with Section 42 cannot be excused simply because contraband was recovered

*Karnail Singh v. State of Haryana*⁶⁵⁹ settled contradictory judgments by a Bench of Constitution Bench by recognizing delay in compliance under special situations, although the same had to be satisfactorily explained.

3.2 Section 43: Search in Public Places:⁶⁶⁰

Section 43 deals with searches carried out in public places and public conveyances. This section differs from Section 42 in that it does not require previous recording of the information.

The Supreme Court in *State of Haryana v. Jarnail Singh*⁶⁶¹, distinguished between Sections 42 and 43 and stated that provisions regarding searches of private premises cannot necessarily be applied to searches in public places.

3.3 Section 49: Authority to Search for Vehicles and Conveyances:⁶⁶²

Under Section 49, officials have the power to search vehicles and conveyances suspected of carrying narcotic drugs. While Section 49 provides a useful tool for law enforcement

purposes, there is always the risk of abuse and infringement on personal rights.

3.4 Critical Analysis:

The differentiation between Sections 42 and 43 by the courts is an effort to strike a balance between enforcement and procedures. However, questions still linger about the nature of search places that lead to litigation.

4. SAFEGUARDS DURING PERSONAL SEARCH AND ARREST:

4.1 Section 50: Right to be Searched Before a Magistrate or Gazetted Officer:⁶⁶³

Among all the procedural safeguards provided in the NDPS Act, Section 50 has attracted considerable judicial attention. Under this section, the person against whom search operation must be conducted shall be told of his/her right to get himself/herself searched only before a Gazetted Officer or Magistrate.

It is essential to understand that the purpose behind Section 50 is to provide openness in the search process and prevent any kind of false recovery from taking place. As discussed above, conviction under the provisions of the NDPS Act depends on the recovery of substances in large number of cases. Hence, it can be said that this Section is significant as it prevents any kind of fabrication in the recovery process.

The constitutional significance of Section 50 can be understood from the decision rendered in *State of Punjab v. Baldev Singh*⁶⁶⁴. The Constitution Bench of the Supreme Court observed that Section 50 provides for a valuable legal right and violation of this right casts serious doubt about the validity of the recovery process. Hence, procedural safeguards provided in the

⁶⁵⁷ *State of Punjab v. Balbir Singh*, (1994) 3 SCC 299.

⁶⁵⁸ *Abdul Rashid Ibrahim Mansuri v. State of Gujarat*, (2000) 2 SCC 513

⁶⁵⁹ *Karnail Singh v. State of Haryana*, (2009) 8 SCC 539.

⁶⁶⁰ The Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985), s. 43.

⁶⁶¹ *State of Haryana v. Jarnail Singh*, (2004) 7 SCC 117

⁶⁶² The Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985), s. 49.

⁶⁶³ The Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985), s. 50.

⁶⁶⁴ *State of Punjab v. Baldev Singh*, (1999) 6 SCC 172.

NDPS Act cannot be considered merely technicalities since they protect people from any kind of abuse of power.

Thereafter, in *Vijaysinh Chandubha Jadeja v. State of Gujarat*⁶⁶⁵, it was made clear that mere questioning of the accused as to whether he would like to get himself searched by a Magistrate or Gazetted Officer is not enough. The accused needs to be apprised of the fact that such a right is available to him. It was said that effective communication of rights is imperative for procedural fairness.

Section 50 was interpreted in the case of *Pawan Kumar v. State of Haryana*⁶⁶⁶ where the difference between personal searches and searches of bags, briefcases, or any other items being carried by the person accused was made. It was ruled that Section 50 applies only to personal searches but not searches of the articles being carried by the accused person.

Notwithstanding the judicial interpretation, disputes over the requirements under Section 50 have been witnessed time and again. The Courts have been called upon to ascertain if the accused was told about his rights and whether the search was done under the provisions of Section 50.

4.2 Section 50A: Information Regarding Arrest:⁶⁶⁷

Section 50A has been enacted to provide additional safeguards for individuals who are under arrest. According to section 50A, the individual in custody must be told about the reasons for his arrest, and at the same time, details concerning his arrest must be conveyed to any relative, friend, or some other person.

These safeguards are provided on the basis of certain constitutional considerations recognized by the Supreme Court in the case of

*D.K. Basu v. State of West Bengal*⁶⁶⁸ to safeguard individuals from any kind of custodial torture and illegal arrest. The need to inform family members plays many roles. This includes protecting detainees from secret detention, fostering accountability, and ensuring access to legal aid.

4.3 Section 52: Procedure After Arrest and Seizure:⁶⁶⁹

Section 52 provides for the procedure to be adopted when a person is arrested, or a substance seized under the NDPS Act. The section states that an officer shall acquaint the person about the cause of his or her arrest, as well as transmit both the accused and the seized substances to the competent authority without undue delay.

The Supreme Court has considered Section 52 merely directive, not mandatory, in most cases. However, there is still a need for substantial compliance, which should be observed to guarantee that the investigation process is fair and reliable.

In *State of Punjab v. Balbir Singh*⁶⁷⁰, the Court stated that compliance with Section 52 would help make the investigation process valid and increase the evidentiary force of the seized substances.

4.4 Constitutional Implications:

The procedural safeguards concerning personal search and arrest have implications under Articles 20(3) and 21 of the Indian Constitution, as personal freedom cannot be restrained arbitrarily or unjustly. Therefore, courts always stress the significance of procedural requirements being construed within the framework of constitutionally established norms.

⁶⁶⁵ *Vijaysinh Chandubha Jadeja v. State of Gujarat*, (2011) 1 SCC 609.

⁶⁶⁶ *Pawan Kumar v. State of Haryana*, (2017) 4 SCC 140.

⁶⁶⁷ The Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985), s. 50A.

⁶⁶⁸ *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

⁶⁶⁹ The Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985), s. 52.

⁶⁷⁰ *State of Punjab v. Balbir Singh*, (1994) 3 SCC 299.

5. EVIDENTIARY SAFEGUARDS:

5.1 Section 52A: Inventory, Sampling and Certification:⁶⁷¹

Section 52A was introduced for the regulation of the process of making inventories, sampling, certification by Magistrates, and disposal of the seized narcotic substance. This section assumes increased relevance since the prosecution of NDPS cases today relies mostly on scientific and forensic evidence. Sampling becomes particularly important in order to make sure that the results obtained from laboratory tests reflect the seized substance.

As mentioned above, in its landmark ruling in *Union of India v. Mohanlal*⁶⁷², the Supreme Court stressed the need for standardization of sampling procedures. The Court argued that adherence to prescribed standards would be important in ensuring the quality of the process of evidence collection.

In another case of recent date of *Bharat Aambale v. State of Chhattisgarh*⁶⁷³, the Supreme Court reminded that sampling and preserving the chain of custody are basic elements of any fair investigation. It was made clear in the case that the samples tested at forensic laboratories had to be representative of the seized contraband.

5.2 Section 55: Safe Custody of Seized Substances:⁶⁷⁴

Section 55 directs the officer-in-charge of the police station to be responsible for taking possession of the seized narcotic substances, sealing them properly, and ensuring their proper custody before trial. This is intended to

safeguard the evidentiary capacity of the seized substances and ensure that there is no alteration or contamination of them.

As pointed out by the Supreme Court in *Valsala v. State of Kerala*⁶⁷⁵, any discrepancy regarding custody and storage may affect the reliability of the prosecution's case. As held in another case, *Ashok v. State of Madhya Pradesh*⁶⁷⁶, defects in the seizure process can give rise to reasonable doubt about the genuineness of the evidence produced.

5.3 Section 57: Reporting to Superior Officers:⁶⁷⁷

Under section 57, an arrest or seizure by officers must be reported to the senior officer within 48 hours. This provision serves the purpose of enabling the process of supervision and accountability within the organization.

The Apex Court ruled in *Sajan Abraham vs. State of Kerala*⁶⁷⁸ that section 57 is directory and not mandatory. Nonetheless, there is still the need for substantial compliance since this provision is intended to serve as another protection against any abuse of power.

5.4 Chain of Custody Issues:

Chain of custody has become extremely relevant in NDPS cases. All transactions regarding the seizure, transportation, storage, analysis, and handling of the substance must be recorded. Interruption of the chain of custody presents a potential avenue for charges of tampering, which is why courts are becoming more focused on documentation of seizure, storage, sampling, and analysis.

6. SECTION 67 AND CONFESSIONAL STATEMENTS:

6.1 Nature and Scope of Section 67:

⁶⁷¹ The Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985), s. 52A.

⁶⁷² *Union of India v. Mohanlal*, (2016) 3 SCC 379.

⁶⁷³ *Bharat Aambale v. State of Chhattisgarh*, Criminal Appeal No. 6069 of 2024 (SC Jan. 6, 2025).

⁶⁷⁴ The Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985), s. 55.

⁶⁷⁵ *Valsala v. State of Kerala*, (1993) 2 SCC 613.

⁶⁷⁶ *Ashok v. State of Madhya Pradesh*, (2011) 5 SCC 123.

⁶⁷⁷ The Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985), s. 57.

⁶⁷⁸ *Sajan Abraham v. State of Kerala*, (2001) 6 SCC 692.

Under Section 67⁶⁷⁹ of the NDPS Act, certain authorized officers have powers to summon any information, examination of witnesses familiar with the facts of the case, and production of documents. Statements under Section 67 of the NDPS Act have been regularly used as substantive evidence by prosecuting authorities for many years and in some cases even the basis of the conviction.

Admissibility of these statements has remained as one of the most contentious issues in NDPS Jurisprudence. The main controversy was whether the officers empowered by the NDPS Act are "police officers" for the purpose of Section 25 of the Indian Evidence Act, 1872, which bars the admission of confessional statements made to police officers.

This issue became relevant from the point of view of Article 20(3) of the Constitution of India because if the confessions are made to such officers in custodial interrogation, then the same may involve self-incrimination.

For many years, there existed confusion on the evidentiary aspect of Section 67 statements due to contradictory judicial opinion. While some decided in favor of admissibility of such statements as evidence, others pointed out that care needed to be taken against involuntary confessions.

6.2 Tofan Singh v. State of Tamil Nadu⁶⁸⁰: A Constitutional Turning Point

In this case, the legal scenario was radically transformed by the Constitution Bench judgement in Tofan Singh v. State of Tamil Nadu. According to the Supreme Court, those vested with powers under the NDPS Act discharge duties which are essentially the same as those carried out by policemen and are thus deemed to be policemen as per Section 25 of the Evidence Act.

Further, the Court ruled that confessional statements made under Section 67 could not be admitted in evidence against the accused.

These rulings were justified on the grounds of some constitutional principles:

- Right against self-incrimination guaranteed by Article 20(3).
- The right to a fair trial as ensured by Article 21.
- To ensure that convictions cannot be based on the coerciveness inherent in custodial confessions.

In addition, the Court noted that criminal convictions ought to be based on reliable and independent evidence rather than self-incriminatory evidence.

6.3 Impact of Tofan Singh Case:

The judgment brought about a marked change in NDPS prosecutions. First, investigation agencies could no longer base their entire cases on confession statements alone. Secondly, more importance was accorded to the issue of forensic evidence, appropriate recovery procedure, and adherence to proper procedural rules. Thirdly, the judgment enhanced constitutional safeguards applicable to the accused and brought NDPS proceedings in line with general criminal proceedings. From a constitutional point of view, Tofan Singh is among the landmark judgments in NDPS law as it reaffirms the constitutional position that even strong anti-drug statutes are subject to constitutional limits.

7. JUDICIAL TRENDS AND EMERGING ISSUES:

7.1 Increasing Judicial Scrutiny of Procedural Compliance:

Judicial rulings from recent times show that there is an emerging trend wherein courts are emphasizing procedural compliance in NDPS investigations. Courts have time and again made clear that while severe punishments prescribed under the NDPS Act should prevail, there should be complete compliance with statutory protections. Thus, the investigation agencies must ensure compliance with the

⁶⁷⁹ The Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985), s. 67.

⁶⁸⁰ *Tofan Singh v. State of Tamil Nadu*, (2021) 4 SCC 1.

procedures for conducting search and seizures and custody of the substance.

7.2 Issues Related to Sampling Irregularities:

Sampling issues have been recognized as one of the major issues in NDPS cases. Courts have noted that sampling problems can have adverse consequences on the quality of forensic evidence and can cast a shadow of doubt on the nature of the substance seized. Thus, there must be strict compliance with Section 52A. Chain of custody must be maintained.

7.3 Electronic Evidence and Digital Documentation:

Technology has made electronic evidence crucial in narcotics cases. CCTV videos, GPS tracking systems, digital documents, and phone records have become vital in the process of prosecution in such cases. The law relating to this was bolstered by Bharatiya Sakshya Adhiniyam, 2023.

7.4 Compliance with Procedural Rules and Bail Law:

While Section 37 of the NDPS Act stipulates very strict terms in granting bail, procedural defects have become increasingly relevant in evaluating the prosecution case. If there are any substantial defects that raise doubts about the probity of the evidence, the court may take corrective action.

7.5 Cases Resulting in Acquittals due to Procedural Defects:

Quite a few NDPS prosecutions have been lost due to procedural defects including non-compliance with Section 42, violations of Section 50, improper sampling, and breaks in the chain of custody. Such defects call for a greater appreciation of the law by the investigating agencies.

8. COMPARATIVE ANALYSIS:

8.1 United States:

In the United States, an individual is protected against unreasonable searches and seizures through the Fourth Amendment to the U.S. Constitution. In general, the authorities are supposed to procure a warrant based on probable cause; however, the use of any evidence obtained through illegal searches will be disallowed in a court of law under the Exclusionary Rule.⁶⁸¹

Implications for India:

- Judicial control over search and seizure activities.
- Use of electronic evidence.
- Protection against misuse.

8.2 United Kingdom:

Search, seizure, arrest, and detention are all governed in the United Kingdom by the Police and Criminal Evidence Act, 1984 (PACE), which offers several procedural protections to ensure that an investigation is transparent, fair, and conducted with due respect for individuals' civil liberties.⁶⁸²

Implications for India:

- Uniform guidelines for procedural measures.
- Record keeping of investigative activities.
- Protective measures for detainees.

8.3 Comparative Analysis:

From the examples provided above, it appears that even in jurisdictions where drug law enforcement is effective, there are provisions for procedural protection. It might be possible for India to borrow some lessons for its NDPS Act from the above jurisdictions.⁶⁸³

9. CHALLENGES AND REFORMS:

9.1 Challenges:

⁶⁸¹ U.S. CONST. amend. IV; *Mapp v. Ohio*, 367 U.S. 643 (1961).

⁶⁸² Police and Criminal Evidence Act, 1984 (UK).

⁶⁸³ United Nations Office on Drugs and Crime, *Handbook on Criminal Justice Responses to Drug Offences* (2019).

Although much judicial guidance exists, certain challenges persist in relation to procedural safeguards.

- **Insufficient Training:** Procedural violations commonly occur due to insufficient knowledge of statutory requirements on the part of investigating officers.
- **Technological Limitations:** Manual methods of documentation increase the risk of mistakes and manipulation.
- **Delayed Forensic Process:** Overdue forensics are a factor affecting delays in prosecution and evidentiary credibility.
- **Poor Chain-of-Custody System:** Inadequacy of the documentation process in respect of storage and transport of seized items remains a challenge.

9.2 Suggested Reforms:

- **Body Cameras:** The use of body cameras would promote procedural clarity during search and seizure exercises.
- **Video Recording of Search Processes:** Video recording ought to be made mandatory in all NDPS-related investigations.
- **Digital Chain of Custody Systems:** The introduction of digital chain of custody systems for narcotic substances is proposed.
- **Uniform Sampling Procedures:** National sampling guidelines need to be developed.
- **Enforcement Officers Training:** Training needs to be organized for law enforcement officers on a regular basis.
- **Review Bodies:** The establishment of independent oversight mechanisms can prove to be beneficial in this respect.

10. CONCLUSION

The NDPS Act stands as India's most significant legislative action against the emerging menace of drug trafficking and crimes involving drugs. On one hand, this statute grants wide-ranging investigative powers and provides

for stringent punishment. On the other hand, the Act ensures certain procedural protections as well, aimed at safeguarding against any misuse of such powers and violation of constitutional rights. Several judgments have proved vital in turning the above-mentioned procedural protections into effective provisions. Cases like *Balbir Singh*, *Baldev Singh*, *Karnail Singh*, *Jadeja*, *Mohanlal*, and *Tofan Singh*, all serve as examples illustrating how compliance with the procedure is not merely a formality but a vital step towards just administration of criminal justice.

Constitutional principles underlying Articles 14, 20(3) and 21 mandate that the enforcement should always be carried out in accordance with fairness and accountability. In essence, the entire NDPS Act regime would be meaningless and baseless without its implementation being strictly bound by law. As more narcotics investigations become technologically advanced, transnational and complex, procedural protections will assume even greater significance. Accordingly, future amendments in the NDPS Act should be geared towards augmenting the enforcement powers while ensuring constitutional guarantees remain intact.

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