



Investigation and Trial Under the NDPS Act and Evolving Law & Procedure on Search and Seizure under NDPS Act



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EVOLUTION OF LAW

- The Opium Act 1857, first revised in 1878.
- The Dangerous Drugs act 1930.
- In 1950, the Opium Act 1878 was revised as the Opium and Revenue Laws Act 1950.
- As per the UN mandate the Govt. of India enacted NDPS Act (61 of 1985) on 16th Sep. 1985 and all the above Acts were repealed.



OBJECTIVE

The main objective of this Act is

- To consolidate and amend the laws relating to narcotic drugs and to oblige the UN mandate.
- To make stringent provisions for control and regulate the operation related to narcotic drugs & psychotropic substance and the matter connected there with.



SCOPE OF THE ACT

- This Act has 83 sections divided into eight chapters.
- One schedule giving the list of psychotropic substances and a notified table specifying the small and commercial quantity of all the substance covered under NDPS Act.
- Substantive provisions of the Act are contained in Chapter-III dealing with prohibition, control and regulation of certain activities.
- These are reinforced by provisions relating to offences and penalties in Chapter-IV.



PUNISHMENT

- Graded system of punishment.
- Based on quantity of seized drug, categorized as:
 - Small Quantity
 - Intermediate Quantity (greater than small but less than commercial)
 - Commercial Quantity

(Notification S.O. 1055E dated 19. 10.2001)

As amended from time to time.



LEGAL PROVISIONS

Important Sections

CHAPTER - I PRELIMINARY

- Section – 2. Definitions(Terminology)

CHAPTER - II AUTHORITIES AND OFFICERS

- Section – 5. Officers of Central Govt. (Narcotics Commissioner)

CHAPTER - IIA NATIONAL FUND FOR CONTROL OF DRUG ABUSE

- Section – 7A & 7B (Annual Report of Activities)

CHAPTER - III PROHIBITION, CONTROL AND REGULATION

- Section – 8. Prohibition of certain operations
- Section – 8A. Prohibition of certain activities relating to property derived from offence
- Section – 9A. Power to Control and regulate controlled substances



LEGAL PROVISIONS

Important Sections

CHAPTER – IV OFFENCES AND PENALTIES

- Section – 15 to 32. Penal sections
- Section – 32A. No suspension, remission or commutation in any sentence awarded under this Act
- Section – 32B. Factors to be taken into account for imposing higher than the minimum punishment
- Section – 35. Presumption of culpable mental state
- Section – 36A. Offences triable by special court
- Section – 37. Offences to be cognizable and non-bailable

CHAPTER – V PROCEDURE

- Section – 41 to 68 (Power and Procedure for search, seizure and arrest)

CHAPTER - VA FORFEITURE OF PROPERTY

- Section – 68A to 68F

CHAPTER - VI MISCELLANEOUS

- Section – 69 to 83 (Prohibition of certain operations)



PROCEDURE BEFORE ARREST OR SEIZURE

Provisions of Sec. 41, 42, 43 & 50 are mandatory:

- 41. Power to issue warrant and authorization
- 42. Power of entry, search, seizure and arrest without warrant or authorization
- 43. Power of seizure and arrest in public place
- 50. Conditions under which search of persons shall be conducted
- 50A. Power to undertake Controlled Delivery



41. POWER TO ISSUE WARRANT AND AUTHORIZATION

- (1) A Metropolitan Magistrate or a Magistrate of the first class or any Magistrate of the second class specially empowered by the State Government in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under this Act, or for the search, whether by day or by night, of any building, conveyance or place in which he has reason to believe any narcotic drug or psychotropic substance or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V A of this Act is kept or concealed:



41. POWER TO ISSUE WARRANT AND AUTHORIZATION

(2) Any such **officer of gazetted rank** of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including the para-military forces or the armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general order or special order of the state govt., **may authorize any officer subordinate to him but superior in rank to a peon, sepoy or a constable to arrest such a person or search a building, conveyance or place whether by day or by night or himself arrest such a person or search a building, conveyance or place.**



42. POWER OF ENTRY, SEARCH, SEIZURE AND ARREST WITHOUT WARRANT OR AUTHORIZATION

- (1) If any officer empowered by the Govt. has reason to believe from persons knowledge or information given by any person and taken down in writing _____, may between sunrise and sunset:
- (a) enter into and search any such building, conveyance or place;
 - (b) in case of resistance, break open any door and remove any obstacle to such entry;
 - (c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance and any document or other article
 - (d) detain and search, and, if he thinks proper, arrest any person



42. POWER OF ENTRY, SEARCH, SEIZURE AND ARREST WITHOUT WARRANT OR AUTHORIZATION

Provided that if such officer has reason to believe that a search warrant or authorization cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at **any time between sunset and sunrise after recording the grounds of his belief.**

(2) Where an officer takes down any information in writing under subsection (1) or records grounds for his belief under the proviso thereto, he shall **within seventy-two hours send a copy thereof to his immediate official superior.**



EMPOWERED OFFICER

NCB

- S.O. 822(E) & 823(E) dated 14.11.1985 for Insp.
- S.O. 3899(E), 3900(E) & 3901(E) dated 30.10.2019 issued in addition to above SOs.

Officers **of and above the rank of SI** in **NCB** to exercise the powers and perform the duties specified in sections 42, 53 and 67 of the Act within the area of their respective jurisdiction.



43. POWER OF SEIZURE AND ARREST IN PUBLIC PLACE

The officer empowered under section 42 may

- (a) **seize in any public place or in transit**, any narcotic drug or psychotropic substance or controlled substance and, along with such drug or substance, any animal or conveyance or article, any document or other article which he has reason to believe may furnish evidence
- (b) **detain and search** any person **and arrest** him and any other person in his company.

Explanation.-For the purposes of this section, the expression "public place" includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.



50. CONDITIONS UNDER WHICH SEARCH OF PERSONS SHALL BE CONDUCTED

- Search of a person to be conducted by officers authorized under Section 42.
- If the person whose search so requires, he should be informed of his right and taken to the nearest Magistrate or Gazetted Officer of the departments mentioned in section 42.
- Female person should be searched only by a female.
- When the officer believes that it is not possible to take the person, to be searched, to the Gazetted Officer or Magistrate without the possibility of the person parting with possession of drug or article or document, he may proceed with the search in accordance to Section 100 of the Code of Criminal Procedure, 1973, and
- He must record the reasons of such belief and send a copy thereof to his immediate superior officer within 72 Hours.



50. CONDITIONS UNDER WHICH SEARCH OF PERSONS SHALL BE CONDUCTED

- The Hon'ble Supreme Court in State of HP vs Pawan Kumar [(2005) 4 SCC 350] held that:
 - *"Person" means a human being with appropriate coverings and clothings and also footwear.*
- The Hon'ble Supreme Court in Megh Singh Vs State of Punjab [(2003) 8 SCC 666] held that
 - *"A bare reading of section 50 shows that it applies in case of personal search of a person. It does not extend to a search of a vehicle or container or a bag or premises."*
- The Hon'ble Supreme Court in Arif Khan Vs State of UK [(Appeal 273/2007) 27.04.2018] held that
 - *In order to make the search and recovery of the contraband articles from the body of the suspect, the search and recovery has to be in conformity with the requirements of Section 50 of the NDPS Act and it is mandatory for the prosecution to prove that the search and recovery was made from the suspect in the presence of a Magistrate or a Gazetted Officer.*



50. CONDITIONS UNDER WHICH SEARCH OF PERSONS SHALL BE CONDUCTED

- Despite a plethora of judgments, there is still lack of clarity on the scope and applicability of Section 50 of the Act in cases of “**composite search**”, i.e. when along with the bag/vehicle/receptacle of the accused, his body is also searched. While some judgments hold that Section 50 would apply only to searches where recovery is made from the body of the accused, others have held that even if the recovery is made from the bag/vehicle/receptacle of the accused, if his body is searched, Section 50 will apply.
- Note- In view of the above it is suggested to conduct personal search **only when the contraband is believed to be recovered from the body of the person.**



50A - POWER TO UNDERTAKE CONTROLLED DELIVERY

- The DG NCB is the Competent Authority or any other officer **authorized by him** may proceed under this provision to undertake controlled delivery of any consignment – in India or to any foreign country.
- This facilitates investigation to bust national / international gangs.



51. PROVISIONS OF THE CODE OF CRIMINAL PROCEDURE, 1973 TO (NOW CHANGED TO BNSS) APPLY TO WARRANTS, ARRESTS, SEARCHES AND SEIZURES.-

The provisions of the Code of Criminal Procedure (CrPC), 1973 (2 of 1974) shall apply, in so far as they are not inconsistent with the provisions of this Act, to all warrants issued and arrests, searches and seizures made under this Act.

• Important sections of the CrPC and their corresponding sections under BNSS:

CrPC Sections	Corresponding sections under BNSS
41 - Arrest without warrant (cognizable offence)	35
41B - Procedure of arrest (Arrest Memo)	36
46 - Arrest how made (secure body)	43
50 - Inform ground of arrest to arrestee	47
50A - Intimation of arrest to nominated person	48
51 - Search of arrested person (Jama Talashi)	49
54 - Medical Examination of arrestee	53
56 - Production of arrestee	57
57- Detention should not be more than 24 hours	58
100- Search, and other related provisions	103



PROCEDURE AFTER ARREST AND SEIZURE

Provisions of section 52, 52A, 55 & 57 of the Act are mandatory-

- 52. Disposal of persons arrested and articles seized.
- 52A. Disposal of seized narcotic drugs and psychotropic substances.
- 55. Police to take charge of articles seized and delivered.
- 57. Report of arrest and seizure.



52. DISPOSAL OF PERSONS ARRESTED AND ARTICLES SEIZED

- (1) Any officer arresting a person under section 41, section 42 section 43 or section 44 shall, as soon as may be, **inform him of the grounds for such arrest.**
- (2) Every person arrested and article seized under warrant issued under subsection (1) of section 41 shall be forwarded without unnecessary delay to the **Magistrate by whom the warrant was issued.**
- (3) Every person arrested and article seized under sub-section (2) of section 41, section 42, section 43 or section 44 shall be forwarded without unnecessary delay to
 - (a) **the officer-in-charge of the nearest police station, or**
 - (b) **the officer empowered under section 53.**
- (4) The authority or officer to whom any person or article is forwarded under sub-section (2) or sub-section (3) shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or article.



55. POLICE TO TAKE CHARGE OF ARTICLES SEIZED AND DELIVERED

An **officer-in-charge of a police station** shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that police station and which may be delivered to him, and shall allow any officer who may accompany such articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station.

- Note- The officers empowered under section 53 of the Act has power of **officer-in-charge of a police station**.



57. REPORT OF ARREST AND SEIZURE

Section 57 – Under this section, whenever any person makes any arrest or seizure, under this Act, he shall, within **forty-eight hours** next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.



36A. OFFENCES TRIABLE BY SPECIAL COURTS

Limitation period for filing of complaint/challan

- For an offence punishable under sec. 19, 24 or 27A or for offences involving commercial quantity the complaint should be filed with in **180 days**.

Provided that, if it is not possible to complete the investigation within the said period of 180 days, the Special Court may extend the said period up to **one year** on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of 180days.

- For offences involving non-commercial quantity or small quantity the complaint should be filed within **60 days**.
- The period is calculated from the next date of the first production date as per the judgment of **Sanjay Dutt vs. CBI (1994) 5 SCC 410**.



OTHER IMPORTANT SECTIONS



Section – 49

Power to stop and search conveyance

Section – 56

Obligation of officers to assist each other

Section – 58

Punishment for vexatious entry, search, seizure or arrest

6months imprisonment - without reasonable ground.

2years imprisonment – for giving false information.

Section – 64A

Immunity from prosecution to addicts volunteering for treatment

Section – 67

Power to call for information

For Enquiry, Documents, Examination

Section - 68

Information as to commission of offence

Need not to disclose the source of information

Section – 69

Protection of action taken in good faith



BAIL PROVISIONS

- One of the key features of the NDPS Act is stringent bail provisions U/S 37 of the Act.
- Courts cannot grant bail in offences under section **19, 24 or 27A** and in offences involving **commercial quantities**.
- If there is delay in filing Challan / Complaint beyond the specified period the accused is entitled to **default bail**.



80. APPLICATION OF THE DRUGS AND COSMETICS ACT, 1940 NOT BARRED

The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Drugs and Cosmetics Act, 1940 (23 of 1940) or the rules made thereunder.



THANK YOU

Q & A