

Presumption of Guilt Under the Narcotic Drugs and Psychotropic Substances Act, 1985 and its Compatibility with the Right to Fair Trial Under Article 21 of The Indian Constitution

Narayane Akshayavarshini N P

First Year LLM Student

School of Excellence in Law, The Tamil Nadu Dr. Ambedkar Law University, Chennai

Abstract: *The Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) is one of India's most stringent criminal legislations, built on a framework of reverse burden and stringent presumptions that deviate from the traditional criminal jurisprudence based on the presumption of innocence. Sections 35 and 54 incorporate statutory presumptions of culpable mental state and possession, shifting the burden of proof onto the accused. While enacted to combat the growing menace of drug trafficking, these presumptions raise significant constitutional concerns under Article 21, which guarantees the right to life and personal liberty, including a fair trial. This paper examines the constitutional validity of these presumptions, analyses the jurisprudence of the Supreme Court and High Courts, evaluates procedural safeguards required under Article 21, and explores whether the NDPS Act, 1985 maintains a balance between societal interest and individual liberties. The Act's compatibility with Article 21 depends not merely on statutory text but on its practical application. Ensuring fairness, due process, proportionality, and robust procedural safeguards is critical to preventing misuse and ensuring that the fight against drug trafficking does not compromise the fundamental values of the Constitution.*

Keywords: presumptions, article 21, narcotic drugs and psychotropic substances, drug trafficking, compatibility, reverse burden

I. INTRODUCTION

The Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act)¹ is widely regarded as one of the harshest and most rigorous pieces of criminal legislation in India. It was enacted at a time when the global community was increasingly alarmed by the rapid proliferation of narcotic drugs and psychotropic substances, the links between drug trafficking and organized crime, and the devastating social, economic, and health-related consequences of substance abuse. In response to these challenges, the Indian Parliament adopted a legal framework that prioritized deterrence, strict enforcement, and severe punishment. The Act consolidated existing laws related to narcotics and aligned Indian law with international conventions, particularly the Single Convention on Narcotic Drugs (1961)², the Convention on Psychotropic Substances (1971)³, and the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic

¹ Narcotic Drugs and Psychotropic Substances Act, 1985
<https://www.indiacode.nic.in/bitstream/123456789/18974/1/narcotic-drugs-and-psychotropic-substances-act-1985.pdf>

² Single Convention on Narcotic Drugs (1961) https://www.unodc.org/pdf/convention_1961_en.pdf

³ Convention on Psychotropic Substances (1971) https://www.unodc.org/pdf/convention_1971_en.pdf



Substances (1988)⁴. Unlike most criminal statutes, the NDPS Act incorporates several exceptional provisions that reflect a deliberate legislative departure from traditional criminal law principles. Among the most controversial of these provisions are Sections 35⁵ and 54⁶, which fundamentally alter the evidentiary burden in NDPS cases. Section 35 introduces a presumption of culpable mental state, essentially assuming that the accused had the requisite intention, knowledge, or motive regarding the offence unless proven otherwise. Section 54 goes a step further by allowing courts to presume the illicit possession of narcotic substances from the mere fact of physical possession. Together, these provisions create a statutory regime in which the accused bears the burden of proving innocence once the prosecution establishes basic foundational facts. This reversal of the burden of proof marks a significant shift from the established principle of presumption of innocence as cornerstone of criminal jurisprudence in democratic societies. Presumption of innocence is not merely a procedural rule; it is a fundamental human right recognized under international law, including Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR)⁷, to which India is a signatory. Within the Indian constitutional framework, this principle is implicitly embedded in Article 21⁸, which guarantees the right to life and personal liberty, interpreted by the Supreme Court to include the right to a fair, just, and reasonable trial. These reverse burden clauses therefore raise profound constitutional questions. The most critical among them is whether such stringent presumptions and evidentiary shifts are compatible with the due process and fair trial safeguards that Article 21 embodies. The issue becomes even more significant considering the severe penalties under the NDPS Act, which include long-term imprisonment, substantial fines, and in certain circumstances, the possibility of minimum mandatory sentencing. In such a context, the risk of wrongful conviction or disproportionate punishment becomes a tangible concern. Over the years, the Supreme Court of India has attempted to mediate the tension between the State's legitimate interest in combating the drug menace and the constitutional mandate to protect individual liberties. A series of landmark judgments including *Noor Aga v. State of Punjab* (2008) 16 SCC 417⁹, *Mohammad Anwar v. State of NCT of Delhi* (2020) 7 SCC 391¹⁰, *Mohan Lal v. State of Punjab* (2018) 17 SCC 627¹¹, *Tofan Singh v. State of Tamil Nadu* (2020) 4 SCC 1¹² and *Baldev Singh v. State of Punjab* (1999) 4 SCC 595¹³ reflect the judiciary's effort to ensure that the harshness of the NDPS Act does not overshadow the fundamental rights of the accused. While the courts have acknowledged the necessity of reverse burdens in certain contexts, legal scholars continue to express deep concern that reverse burden provisions undermine core constitutional principles, distort adversarial criminal procedure, and disproportionately impact vulnerable groups particularly the

⁴ UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) https://www.unodc.org/pdf/convention_1988_en.pdf

⁵ Section 35 of the NDPS Act, 1985 https://www.indiacode.nic.in/show-data?actid=AC_CEN_2_2_00029_198561_1517807326222&orderno=45

⁶ Section 54 of the NDPS Act, 1985 https://www.indiacode.nic.in/show-data?actid=AC_CEN_2_2_00029_198561_1517807326222§ionId=25169§ionno=54&orderno=71

⁷ Article 14(2) of the Interned Covenant on the Civil and Political Rights <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

⁸ Article 21 of the Indian Constitution, <https://indiankanoon.org/doc/1199182/>

⁹ *Noor Aga v. State of Punjab* (2008), S B Sinha, 16 SCC 417 <https://indiankanoon.org/doc/1584447/>

¹⁰ *Mohammad Anwar v. State of NCT of Delhi* (2020) 7 SCC 39, Surya Kant <https://indiankanoon.org/doc/93147676/>

¹¹ *Mohan Lal v. State of Punjab* (2018) 17 SCC 627, Navin Sinha J, https://narcoticsindia.nic.in/Judgments/Mohan_Lal_vs_The_State_Of_Punjab_on_16_August_2018.pdf

¹² *Tofan Singh v. State of Tamil Nadu* (2020), R F Nariman, 4 SCC 1 <https://indiankanoon.org/doc/143202244/>

¹³ *Baldev Singh v. State of Punjab* (1999) 4 SCC 595, Dr. A S Anan, https://jajharkhand.in/wp/wp-content/judicial_updates_files/10_Narcotic_Drugs/01_search_of_a_person_of_an_enclosed_place_in_a_public_place/State_Of_Punjab_vs_Baldev_Singh_on_21_July_1999.PDF



poor, illiterate, and socially marginalized, who often lack access to effective legal representation. Critics argue that the procedural fairness is compromised, and the risk of miscarriage of justice is significantly heightened.

NEED FOR THE STUDY

The Narcotic Drugs and Psychotropic Substances Act, 1985 was enacted to combat the growing menace of drug trafficking and substance abuse. To strengthen enforcement, the Act incorporates reverse burden provisions under Sections 35 and 54, which shift part of the burden of proof from the prosecution to the accused. While these provisions are intended to facilitate effective prosecution of drug-related offences, they raise serious constitutional concerns regarding the presumption of innocence, fair trial rights, and personal liberty guaranteed under Article 21 of the Constitution of India. Given the severe punishments, restrictive bail provisions, and possibility of prolonged incarceration under the NDPS Act, it becomes essential to examine whether these reverse burden clauses strike an appropriate balance between societal interests and individual rights. This study seeks to critically analyse the constitutional validity and practical implications of such provisions within the framework of Article 21.

SIGNIFICANCE OF THE STUDY

The study is significant because it addresses one of the most contentious issues in Indian criminal jurisprudence—the compatibility of reverse burden clauses with constitutional guarantees of fairness and due process. It contributes to the ongoing debate concerning the balance between national interest in controlling drug offences and the protection of fundamental rights. The research evaluates judicial interpretations of Sections 35 and 54, analyses landmark Supreme Court decisions, and examines whether the procedural safeguards under the NDPS Act adequately protect accused persons. The study also highlights the implications of reverse burden provisions on vulnerable and marginalized individuals who may lack access to effective legal representation. Further, it contributes to constitutional and criminal law scholarship by assessing the evolving relationship between statutory presumptions and Article 21.

REVIEW OF LITERATURE

1. M.P. Jain – *Indian Constitutional Law*

M.P. Jain discusses the scope of Article 21 and the requirement that any law affecting personal liberty must satisfy the standards of fairness, justice, and reasonableness established by the Supreme Court.

2. V.N. Shukla – *Constitution of India*

The author analyses fair trial rights, due process, and constitutional protections available to accused persons under Articles 20 and 21.

3. K.N. Chandrasekharan Pillai – *General Principles of Criminal Law*

The work examines the presumption of innocence as a foundational principle of criminal law and discusses statutory exceptions to this rule.

4. K.I. Vibhute – *PSA Pillai's Criminal Law*

The author evaluates burden of proof, evidentiary presumptions, and the constitutional implications of reverse burden clauses in special criminal statutes.

5. Noor Aga v. State of Punjab (2008)

This landmark judgment emphasizes that foundational facts must be established by the prosecution before presumptions under Sections 35 and 54 can be invoked.

6. Tofan Singh v. State of Tamil Nadu (2020)

The Supreme Court strengthened constitutional protections by holding that confessional statements recorded under Section 67 cannot be treated as admissible confessions.

7. International Covenant on Civil and Political Rights (ICCPR)

Article 14(2) recognizes the presumption of innocence as a fundamental human right and provides an international framework for evaluating reverse burden provisions.



RESEARCH GAP

Existing literature extensively discusses the objectives and enforcement mechanisms of the NDPS Act. Similarly, several studies examine constitutional protections under Article 21. However, limited research specifically analyses the constitutional compatibility of Sections 35 and 54 with Article 21 in the post-*Tofan Singh* era. Most studies focus either on narcotics control or constitutional rights independently without undertaking a comprehensive examination of the interaction between reverse burden provisions, procedural safeguards, and fair trial guarantees. This study seeks to bridge this gap by critically evaluating whether the reverse burden framework under the NDPS Act satisfies constitutional standards of fairness, proportionality, and due process.

RESEARCH PROBLEM

The central research problem is whether the reverse burden provisions under the NDPS Act are constitutionally compatible with Article 21 of the Constitution of India.

RESEARCH QUESTIONS

- What is the constitutional basis of the presumption of innocence in Indian criminal jurisprudence?
- What is the nature and scope of reverse burden provisions under Sections 35 and 54 of the NDPS Act?
- How have Indian courts interpreted the relationship between reverse burden clauses and Article 21?
- Do the procedural safeguards under the NDPS Act adequately protect the rights of accused persons?
- Whether the reverse burden framework satisfies the constitutional tests of fairness, proportionality, and reasonableness?
- What reforms are necessary to harmonise NDPS enforcement with constitutional guarantees?

HYPOTHESES

- H1: Sections 35 and 54 of the NDPS Act constitute a significant departure from the traditional principle of presumption of innocence by shifting the burden of proof onto the accused.
- H2: The constitutional validity of reverse burden provisions depends upon strict compliance with procedural safeguards and the establishment of foundational facts by the prosecution.
- H3: Judicial interpretation has played a crucial role in ensuring that reverse burden clauses operate within the limits of Article 21.
- H4: Despite their legislative objective of combating drug trafficking, reverse burden provisions create a risk of unfair trial and wrongful conviction if applied without adequate procedural safeguards.
- H5: The reverse burden framework under the NDPS Act can be constitutionally sustained only when interpreted in a manner consistent with the principles of fairness, proportionality, and due process under Article 21.

OBJECTIVES OF THE STUDY

- To critically analyse the constitutional compatibility of reverse burden provisions under the NDPS Act with Article 21 of the Constitution of India.
- To examine the concept of presumption of innocence in criminal jurisprudence.
- To analyse Sections 35 and 54 of the NDPS Act and their legal implications.
- To study the constitutional safeguards available under Articles 14, 20(3), 21, and 22.
- To evaluate judicial interpretations concerning reverse burden clauses.
- To assess whether the procedural safeguards under the NDPS Act adequately protect accused persons.
- To suggest reforms for ensuring a balance between effective drug control and constitutional rights.



RESEARCH METHODOLOGY

The present study adopts a **doctrinal research methodology** based on qualitative legal analysis. The primary sources are the Constitution of India, Narcotic Drugs and Psychotropic Substances Act, 1985, International Covenant on Civil and Political Rights (ICCPR), Supreme Court and High Court judgments, United Nations Drug Control Conventions. The secondary sources are books on constitutional law and criminal law research articles and legal journals, Law Commission Reports, Commentaries on the NDPS Act and Government publications and academic databases. The study employs analytical, descriptive, and comparative methods. Judicial decisions, statutory provisions, constitutional principles, and international standards are critically examined to assess the constitutional validity of reverse burden clauses.

SCOPE OF THE STUDY

The study focuses on the constitutional validity of reverse burden provisions under Sections 35 and 54 of the NDPS Act. It examines their interaction with Articles 14, 20(3), 21, and 22 of the Constitution of India. The research analyses relevant statutory provisions, constitutional principles, international human rights standards, and judicial precedents. Particular emphasis is placed on the concept of presumption of innocence, procedural fairness, and proportionality in criminal justice. The study also considers the impact of landmark decisions such as Noor Aga, Tofan Singh, and Baldev Singh in shaping constitutional jurisprudence relating to NDPS prosecutions.

LIMITATIONS OF THE STUDY

The study is doctrinal in nature and primarily relies on legal materials, statutes, and judicial decisions.

- It does not involve empirical research based on interviews, surveys, or field studies.
- The research is confined to the constitutional implications of reverse burden provisions and does not comprehensively analyse all aspects of the NDPS Act.
- Variations in judicial interpretation across different courts may limit the uniformity of conclusions.
- The study is limited to the Indian legal framework, with only limited reference to international human rights standards and comparative jurisprudence.
- Ongoing developments in constitutional and criminal jurisprudence may influence future interpretations of reverse burden provisions.

HISTORY OF THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

The enactment of the Narcotic Drugs and Psychotropic Substances Act, 1985 marked a watershed moment in India's legislative approach to drug control, representing a decisive shift from a fragmented regulatory framework to a comprehensive and stringent legal regime. Prior to 1985, India's drug control measures were governed by a trio of colonial-era statutes: the Opium Act of 1857¹⁴, the Opium Act of 1878¹⁵, and the Dangerous Drugs Act of 1930¹⁶. These laws, though significant for their time, were narrow in scope, limited in enforcement capability, and ill-equipped to counter the evolving challenges posed by the global narcotics market. The regulatory mechanisms under these statutes were mostly administrative in nature, focusing on the cultivation, manufacture, and distribution of opium and a limited set of narcotic substances. Their enforcement provisions lacked teeth, and penalties were relatively mild. As a result, drug traffickers often exploited loopholes in the law, and enforcement agencies struggled with inadequate powers to investigate, seize, or prosecute offenders effectively.

¹⁴ Opium Act of 1857 https://www.indiacode.nic.in/show-data?actid=AC_CEN_2_2_00029_198561_1517807326222§ionId=25449§ionno=82&orderno=128

¹⁵ Opium Act of 1878, Repealed.

¹⁶ Dangerous Drugs Act of 1930 <https://www.indiacode.nic.in/repealedfileopen?rfilename=A1930-2.pdf>



Over time, the ineffectiveness of these laws became more pronounced, particularly as India began to observe increasing incidents of smuggling, illegal cultivation, and trafficking of psychotropic substances that were not covered by the earlier statutes. The absence of a holistic and robust legislative framework created a vacuum that facilitated the expansion of drug networks and encouraged criminal elements to exploit India's geographical vulnerabilities.

The need for a stringent, consolidated law became even more urgent in the late 1970s and early 1980s as the international drug trade witnessed an unprecedented surge.

India's strategic location between two of the world's largest illicit drug-producing regions the "Golden Crescent" (comprising Afghanistan, Iran, and Pakistan) and the "Golden Triangle" (comprising Myanmar, Laos, and Thailand) made it an easy transit point for narcotics on their way to Europe, Africa, and North America.

The porous borders, extensive coastline, and expanding transportation networks further facilitated the movement of illegal consignments. During this period, security agencies began to report alarming increases in heroin trafficking, poppy cultivation, and synthetic drug abuse. Simultaneously, India was becoming a consumer market as well, with a rise in local addiction and drug-related health crises. These developments raised concerns not only about internal law and order but also about national security, as drug trafficking became closely linked to organized crime syndicates and, increasingly, to cross-border terrorism. Given these emerging realities, it became evident that the existing laws were outdated and insufficient to confront the complexities of transnational narcotics trade.

Another major factor behind the enactment of the NDPS Act was India's commitment to its international obligations. As a member of the United Nations and a signatory to key global drug control conventions, India was required to adopt stringent measures to regulate the production, manufacture, trade, and use of narcotic drugs and psychotropic substances. These included the UN Single Convention on Narcotic Drugs (1961), the Convention on Psychotropic Substances (1971), and the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988). The 1961 Convention, in particular, required countries to criminalize the possession, cultivation, and trafficking of narcotics except for medical and scientific purposes. It also emphasized strict penal measures and enhanced international cooperation in investigation and extradition. India's earlier statutes did not meet these obligations comprehensively and the NDPS Act was therefore designed not only to modernize India's internal drug laws but also to harmonize them with the emerging global legal architecture governing narcotics.

The objectives behind the stringency of the NDPS Act can be understood in light of these historical factors. First, the Act sought to dismantle organized crime networks involved in drug trafficking, smuggling, and illegal production.

By introducing mandatory minimum sentences, reversing the burden of proof, and giving sweeping powers to enforcement agencies, the Act aimed to deter criminal elements and make drug-related offences difficult to evade. Second, the Act was intended to protect public health by curbing the availability of addictive and harmful substances.

With drug abuse increasingly affecting youth populations and vulnerable communities, lawmakers perceived strict criminalization as necessary to prevent widespread social harm. Third, the Act served the critical objective of preventing drug-linked terrorism and money laundering, as intelligence reports frequently highlighted the connection between narcotics trafficking, militant groups, and extremist financing.

The harsh provisions were therefore justified as measures to safeguard national security. Finally, the Act was designed to ensure compliance with international obligations, enabling India to actively participate in global initiatives aimed at reducing illicit drug supply and demand. The requirement of international cooperation especially in extradition, mutual assistance, and intelligence-sharing meant that India needed a modern, comprehensive law that aligned with international standards.

In essence, the NDPS Act was conceived as a powerful and integrated legislative framework intended to counter the multifaceted challenges posed by narcotics. It replaced an outdated system with a coordinated approach that combined strict penal provisions, expansive enforcement powers, and international collaboration. While the Act successfully addressed several legislative gaps and enabled India to take decisive action against drug trafficking, its stringent nature and the introduction of reverse burden clauses later gave rise to intense constitutional debates especially concerning the balance between societal interests and individual liberties under Article 21 of the Constitution.



PROVISIONS DISCUSSING PRESUMPTIONS UNDER THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

Section 35- Presumption of culpable mental state

(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation- In this section "culpable mental state" includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section , a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.

Section 54- Presumption from possession of illicit articles

In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of

- (a) any narcotic drug or psychotropic substance or controlled substance;
- (b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;
- (c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or
- (d) any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured for the possession of which he fails to account satisfactorily.

Section 43- Power of seizure and arrest in public places¹⁷

Any officer of any of the departments mentioned in section 42 may,

- (a) seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act 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 VA of this Act;
- (b) detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.

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.

Section 50- Conditions under which search of persons shall be conducted¹⁸

When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

¹⁷ Section 43- Power of seizure and arrest in public places. https://www.indiacode.nic.in/show-data?actid=AC_CEN_2_2_00029_198561_1517807326222&orderno=57

¹⁸ Section 50- Conditions under which search of persons shall be conducted. <https://indiankanoon.org/doc/961083/>



- (2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).
- (3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.
- (4) No female shall be searched by anyone except a female.
- (5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).
- (6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.

Section 37- Offences to be cognizable and non-bailable¹⁹

- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),
 - (a) every offence punishable under this Act shall be cognizable;
 - (b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless
 - (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and
 - (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.
- (2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

Section 42- Power of entry, search, seizure and arrest without warrant or authorisation²⁰

- (1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including paramilitary forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that 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 VA of this Act is kept or concealed in any building, conveyance or enclosed place, 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 which he has reason to believe to be liable to confiscation under this Act and any document or other

¹⁹ Section 37- Offences to be cognizable and non-bailable.

https://www.indiacode.nic.in/show-data?actid=AC_CEN_2_2_00029_198561_1517807326222&orderno=51

²⁰ Section 42- Power of entry, search, seizure and arrest without warrant or authorisation.

https://www.indiacode.nic.in/show-data?actid=AC_CEN_2_2_00029_198561_1517807326222§ionId=25154§ionno=42&orderno=56

https://www.indiacode.nic.in/show-data?actid=AC_CEN_2_2_00029_198561_1517807326222§ionId=25154§ionno=42&orderno=56



article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act.

Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector.

Provided further that if such officer has reason to believe that a search warrant or authorisation 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 sub-section (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.

PERSPECTIVE

Sections 35, 54, 42, 43, 50 and 37 of the NDPS Act collectively establish a stringent legal regime aimed at combating drug trafficking, but they also create significant tensions with constitutional guarantees under Articles 20 and 21. Section 35 introduces a presumption of culpable mental state covering intention, knowledge, motive, and belief placing the burden on the accused to disprove it, though the prosecution must still prove foundational facts beyond reasonable doubt. Section 54 further presumes guilt from mere possession unless satisfactorily explained, making lawful account of possession essential for the accused. Sections 42 and 43 provide wide powers of entry, search, seizure, and arrest. Section 42 regulating searches in buildings with mandatory recording of information and communication to superiors within 72 hours, while Section 43 enables search and arrest in public places without such preconditions. Section 50 safeguards personal liberty by requiring that a person about to be searched be informed of the right to be taken before a Gazetted Officer or Magistrate, with non-compliance often proving fatal to prosecution. Section 37 imposes extremely restrictive bail conditions for serious offences, requiring courts to be satisfied that the accused is not guilty and not likely to reoffend, reversing normal bail jurisprudence. Together, these provisions reflect the legislature's intent to prioritise societal interest and deterrence, yet they also demand strict procedural compliance and judicial oversight.

CONSTITUTIONAL PROVISIONS

Article 14- Right to Equality²¹

Article 14 embodies the principles of equality before law and equal protection of laws. Any statutory provision, including reverse burden clauses under the NDPS Act, must pass the test of non-arbitrariness. The Supreme Court has consistently held that Article 14 strikes at arbitrariness in State action, whether legislative or executive. Reverse burden clauses under Sections 35 and 54 must therefore be based on reasonable classification and must have a rational nexus with the object sought to be achieved—namely, the prevention of drug trafficking. The law must treat similarly situated persons alike, while allowing differential treatment only when justified by an intelligible differentia. If the reverse burden imposes disproportionate hardship or creates a risk of arbitrary or discriminatory application, it may be vulnerable to challenge under Article 14. Hence, presumptions of guilt can be constitutionally sustained only when accompanied by adequate procedural safeguards and judicial oversight.

²¹ Article 14- Right to Equality <https://indiankanoon.org/doc/367586/>



Article 20(3)- Protection against Self-Incrimination²²

Article 20(3) declares that no person accused of an offence shall be compelled to be a witness against himself. This protection extends to oral testimony, written statements, and any compelled act leading to the production of incriminating evidence. Reverse burden provisions must therefore be interpreted in a manner that does not force the accused to depose or furnish evidence in violation of this constitutional safeguard. Although the NDPS Act places the burden of proving absence of culpable mental state on the accused, such a burden cannot compel self-incriminating testimony. The SC in Tofan Singh emphasised the importance of Article 20(3) by declaring confessional statements recorded by officers under Section 67 as inadmissible, recognising the coercive potential inherent in NDPS investigations. While presumptions may shift the burden of proof, they cannot dilute the constitutional protection ensuring constitutional liberty.

Article 21- Right to Life and Personal Liberty

Article 21 is the heart of the constitutional framework, guaranteeing that life and personal liberty cannot be deprived except through a procedure that is just, fair, and reasonable. The Supreme Court, through decisions such as *Maneka Gandhi*, has expanded Article 21 to include principles of natural justice, fair trial rights, and humane treatment of accused persons. Presumption of innocence is considered a human right and a vital component of a fair criminal process. Therefore, any reverse burden under NDPS law must satisfy the test of proportionality, ensuring that restrictions on liberty are necessary and not excessive. Given the harsh penalties and stringent bail conditions under Section 37, Article 21 requires that courts scrutinise procedural compliance strictly—especially searches, seizures, and arrests—because a failure in procedure can lead to prolonged incarceration even before trial. Thus, Article 21 is the ultimate constitutional safeguard ensuring that NDPS presumptions do not result in arbitrary or unjust deprivation of liberty.

Article 22 – Arrest and Detention Safeguards²³

Article 22 provides essential constitutional protections relating to arrest and detention, particularly significant for NDPS cases where long pre-trial detention is common due to strict bail provisions. This article mandates that an arrested person must be informed of the grounds of arrest, must be allowed to consult and be defended by a legal practitioner of one's choice, and must be produced before a magistrate within 24 hours. These safeguards ensure transparency and prevent abuse at the initial stages of NDPS investigations, which often involve secret information, sudden raids, and immediate arrests. Strict compliance with Article 22 is necessary to counterbalance the stringent presumptions and the heavy burden imposed on the accused by the NDPS Act. Failure to follow these safeguards can render the arrest illegal and undermine the validity of any subsequent presumption drawn under Sections 35 and 54, as constitutional protections must prevail over statutory presumptions.

PRESUMPTION OF INNOCENCE FROM A CONSTITUTIONAL PERSPECTIVE

The presumption of innocence, although not expressly articulated in the Constitution of India, has been recognised by the judiciary as an integral component of the broader guarantee of a fair trial. It flows naturally from Articles 20 and 21, which protect individuals against arbitrary deprivation of liberty and ensure fairness in criminal procedure. The doctrine is a foundational principle of criminal jurisprudence, reflecting the moral and legal belief that no person should be punished unless guilt is proven beyond reasonable doubt by the prosecution.

The Supreme Court has played a pivotal role in constitutionalising this principle. In *Hussainara Khatoun v. State of Bihar* (1980) 1 SCC 81²⁴, the Court held that speedy trial is a fundamental right under Article 21, reinforcing that

²² Article 20(3)- Protection against Self-Incrimination <https://indiankanoon.org/doc/366712/>

²³ Article 22 – Arrest and Detention Safeguards <https://indiankanoon.org/doc/581566/>

²⁴ *Hussainara Khatoun v. State of Bihar* (1980) 1 SCC 81, P N Bhagwati, <https://indiankanoon.org/doc/1373215/>



fairness and reasonableness are inseparable from criminal adjudication. The decision laid the foundation for recognising elements of fair procedure, including presumption of innocence, as part of the right to personal liberty. Similarly, in *State of Rajasthan v. Kashi Ram* (2006) 12 SCC 254²⁵, the Court explicitly acknowledged that presumption of innocence is a human right, and any deviation from this principle must be justified within constitutional limits.

However, the NDPS Act introduces statutory presumptions under Sections 35 and 54, which shift the burden of proof onto the accused a clear departure from traditional constitutional values. The tension arises because such presumptions effectively weaken the protection available to an accused at the initial stages of a criminal proceeding. They may lead to situations where liberty is curtailed even before guilt is conclusively established, particularly because of stringent bail provisions and harsh mandatory minimum sentences. These features raise critical constitutional concerns, as Article 21 mandates that any procedure restricting liberty must be just, fair, and reasonable.

While the Legislature may create exceptions to the presumption of innocence for compelling state interests, such deviations must satisfy the test of proportionality and maintain adherence to minimum constitutional guarantees. Thus, the reverse burden framework under the NDPS Act must be judicially scrutinised to ensure that it does not undermine the deeply rooted constitutional value of presuming the accused innocent until proven guilty.

CONTOURS AND JUSTIFICATIONS OF REVERSE BURDEN UNDER THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

The NDPS Act incorporates a reverse burden of proof primarily under Sections 35 and 54, a feature that marks a clear departure from conventional criminal procedure where the prosecution bears the burden of establishing guilt beyond reasonable doubt.

Societal Interest

The foremost justification for imposing a reverse burden lies in the compelling societal interest in combating the menace of drug trafficking. Drug crimes are inherently transnational, organised, and clandestine in nature. Traffickers often operate through layered networks, use sophisticated concealment methods, and rely on intermediaries, making direct evidence of mens rea or knowledge extremely difficult to obtain. In such circumstances, insisting on the traditional prosecution burden could lead to widespread acquittals despite the presence of contraband. Therefore, Parliament sought to strengthen enforcement by creating presumptions that allow courts to infer culpability once possession or other foundational facts are proven. The approach is based on the understanding that the societal cost of drug proliferation especially on youth and public health outweighs the need for strict adherence to traditional evidentiary burdens.

Legislative Policy

The legislative policy behind the NDPS Act is grounded in the need to tackle organised criminal enterprises engaged in narcotic trafficking. Parliament recognised early that offences under this Act differ fundamentally from ordinary crimes because they are often committed in secrecy, leaving minimal direct evidence. Hence, establishing the mental element of knowledge, intention, or conscious possession poses a significant challenge for law enforcement agencies. Stringent presumptions help bridge this evidentiary gap by shifting the burden onto the accused to explain circumstances that are peculiarly within their knowledge. Moreover, the Act aims to create a strong deterrent effect. Harsh punishments, combined with reverse burdens, serve to signal zero tolerance and discourage involvement in drug-related activities. The policy rationale is thus rooted in the belief that extraordinary crimes justify extraordinary legal measures.

International Obligations

India is a signatory to several international conventions, including the Single Convention on Narcotic Drugs, 1961, the Convention on Psychotropic Substances, 1971 and the UN Convention Against Illicit Traffic in Narcotic Drugs and

²⁵ *State of Rajasthan v. Kashi Ram* (2006) 12 SCC 254, B P Singh, <https://indiankanoon.org/doc/116940/>



Psychotropic Substances, 1988. These instruments require States to adopt stringent measures to suppress drug trafficking and impose criminal liability for unlawful possession, cultivation, and distribution. Parliament, in fulfilling these obligations, introduced stronger enforcement tools into domestic law. The reverse burden provisions under the NDPS Act are therefore not merely a national policy choice but also a reflection of India's commitments to global drug-control frameworks. By aligning domestic law with international norms, India aims to cooperate effectively in transnational investigations and curb cross-border trafficking.

Balancing Mechanism: Foundational Facts Requirement

Despite these justifications, the reverse burden does not translate into absolute or automatic guilt. Courts have consistently held that the prosecution must first establish "foundational facts" such as conscious possession, proper seizure, and lawful search before any presumption can be invoked. This requirement ensures that reverse burden provisions do not operate in a vacuum and prevents their misuse. Only after the prosecution discharges this initial obligation does the burden shift to the accused, who may rebut the presumption on a preponderance of probabilities. Thus, the reverse burden scheme attempts to strike a balance between societal needs and fairness in criminal adjudication.

CASE LAWS

Noor Aga v. State of Punjab (2008) 16 SCC 417

The Supreme Court held that the prosecution must first prove foundational facts, especially conscious possession, before invoking presumptions under Sections 35 and 54. In this case, procedural lapses and inconsistencies in the evidence made the recovery doubtful. The Court emphasised that reverse burden is not automatic. Article 21 requires fair and just procedure even under stringent statutes. Since the prosecution failed in its primary burden, the accused was entitled to acquittal. The judgment reinforces constitutional scrutiny in NDPS cases.

Tofan Singh v. State of Tamil Nadu (2020) 9 SCC 1

The Supreme Court ruled that officers of the NCB/Customs are "police officers" under Article 20(3). Therefore, confessional statements made under Section 67 of the NDPS Act are inadmissible as confessions. This significantly strengthened protections against self-incrimination. The Court held that convictions cannot be based on such statements alone. Prosecution must bring independent evidence before applying presumptions. The judgment ensures NDPS investigations comply with constitutional safeguards.

Raju v. State of Kerala (2008) 9 SCC 527²⁶

The case involved the accused Raju, who was convicted under the NDPS Act for alleged possession of ganja. The Supreme Court examined whether the prosecution had proved conscious possession, emphasising that mere physical proximity or presence near the contraband is insufficient for conviction. The Court held that the prosecution failed to establish foundational facts such as exclusive control or knowledge of the substance. It reiterated that statutory presumptions under Sections 35 and 54 arise **only after** conscious possession is proved beyond reasonable doubt. The conviction was set aside, strengthening the principle that harsh NDPS provisions cannot override the requirement of fair procedure and reliable evidence.

E. Micheal Raj v. Intelligence Officer (2008) 5 SCC 161²⁷

The Court clarified that only the actual drug content, not the entire mixture containing neutral substances, determines quantity for punishment under NDPS. Treating the whole mixture weight as the drug quantity leads to disproportionate punishment and violates fairness. The ruling mandates purity analysis and prevents excessive penal consequences. It aligns NDPS sentencing with Article 21 proportionality. The judgment protects against arbitrary determination of commercial quantity.

²⁶ Raju v. State of Kerala (2008) 9 SCC 527, R Basant, J, <https://indiankanoon.org/doc/102267406/>

²⁷ E. Micheal Raj v. Intelligence Officer (2008) 5 SCC 161, P P Naolekar, <https://indiankanoon.org/doc/1813727/>



Baldev Singh v. State of Haryana (2015) 17 SCC 554²⁸

The Supreme Court held that non-compliance with Section 50 (right to be searched before a Magistrate/Gazetted Officer) makes the entire search illegal. Consequently, the presumption under Section 54 cannot arise. The Court emphasised that Section 50 is a mandatory procedural safeguard rooted in Article 21. As the search was invalid, the recovery and conviction could not stand. The judgment reiterates strict procedural compliance.

Abdul Rashid Ibrahim Mansuri v. State of Gujarat (2000) 2 SCC 513²⁹

The Court held that the presumption under Section 54 applies only after the prosecution proves possession, including knowledge and control. The accused may rebut the presumption through a preponderance of probability, not proof beyond reasonable doubt. Since the prosecution failed to establish conscious possession, the presumption could not operate. The judgment balances strict NDPS provisions with fairness. It affirms that reverse burden cannot override primary prosecutorial obligations.

Union of India v. Ram Samujh (1999)³⁰

This case clarified that bail under NDPS is exceptional, especially for commercial quantity cases. Section 37 imposes twin mandatory conditions before granting bail, reflecting the gravity of drug offences. Courts must record satisfaction that the accused is not guilty and will not reoffend. Ordinary bail principles do not apply. The Supreme Court denied bail, stressing societal interest. The case highlights the restrictive bail regime under NDPS cases.

State of Punjab v. Baldev Singh (1999) 4 SCC 595

The Court held that Section 50 provides a valuable and mandatory right to the accused during personal search. Failure to inform the accused of this right renders the search illegal and the recovery inadmissible. Strict compliance is required due to severe NDPS penalties. The Court stressed the link between Section 50 and Article 21 protections. Resultantly, conviction based on such illegal search was invalid. This case is foundational in NDPS procedural law.

Arif Khan v. State of Uttarakhand (2018) 18 SCC 380³¹

The Court held that Section 50 compliance is mandatory in personal searches. If the accused is not informed of their right to be searched before a Magistrate/Gazetted Officer, the recovery becomes invalid. Consequently, presumptions cannot arise from such illegal procedures. The Court overturned the conviction due to this non-compliance. The judgment reaffirms procedural fairness even in stringent NDPS cases safeguarding constitutional rights.

Mohammed Sahabuddin v. State of Assam (2012) 13 SCC 491³²

The prosecution alleged narcotics were recovered from a vehicle the accused was travelling in. The Court held that mere presence in a vehicle does not establish conscious possession. Since the prosecution failed to prove foundational facts, reverse burden provisions could not apply. The accused successfully rebutted the weak presumption and the court acquitted him.

COMPATIBILITY OF SECTIONS 35 AND 54 WITH ARTICLE 21

The constitutionality of Sections 35 and 54 of the NDPS Act, which impose a reverse burden of proof on the accused, has been a subject of sustained debate because they interact directly with the Article 21 guarantee of fair, just, and reasonable procedure. Supporters of these provisions argue that they constitute a reasonable restriction necessitated by

²⁸ Baldev Singh v. State of Haryana (2015) 17 SCC 554, R Banumathi, <https://indiankanoon.org/doc/155953979/>

²⁹ Abdul Rashid Ibrahim Mansuri v. State of Gujarat (2000), Dr A S Anand, K T Thomas, S Rajendra Babu, <https://indiankanoon.org/doc/173350/>

³⁰ Union of India v. Ram Samujh (1999), K T Thomas, M B Shah, https://narcoticsindia.nic.in/Judgments/Union_Of_India_vs_Ram_Samujh_And_An_r_on_30_August_1999.pdf

³¹ Arif Khan v. State of Uttarakhand (2018) 18 SCC 380, Abhay Manohar Sapre, R K Agrawal, https://narcoticsindia.nic.in/Judgments/Arif_Khan_Agha_Khan_vs_The_State_Of_Uttarakhand_on_27_April_2018.pdf

³² Mohammed Sahabuddin v. State of Assam (2012) 13 SCC 491, Fakkir Mohamed Ibrahim Kaifulla, J, <https://indiankanoon.org/doc/26546383/>



the extraordinary nature of drug crimes, which are transnational, organised, and difficult to investigate using conventional evidentiary rules. They emphasise that the presumptions under these sections are rebuttable rather than conclusive, ensuring that the accused retains the opportunity to explain or counter the prosecution case. Furthermore, the Supreme Court in cases like Noor Aga and E. Micheal Raj has held that the prosecution must first prove foundational facts such as conscious possession, proper seizure, and lawful search before any reverse burden can arise, thereby preserving a core aspect of procedural fairness. Proponents also rely on the doctrine of proportionality, asserting that the severe societal harm caused by narcotics justifies calibrated deviations from the presumption of innocence. On the other hand, critics argue that reverse burden clauses inherently dilute the presumption of innocence, a central pillar of criminal jurisprudence and part of the essence of Article 21. By placing the burden on the accused, these provisions increase the risk of wrongful convictions, particularly when investigative agencies fail to comply with mandatory safeguards like Sections 42, 50, and 57. This concern is exacerbated by the NDPS Act's harsh sentencing framework and restrictive bail conditions under Section 37, which frequently result in prolonged pre-trial detention that itself violates Article 21's guarantee of personal liberty. Prior to the Tofan Singh decision, confessional statements recorded under Section 67 were often extracted through coercive practices, further compromising fairness and raising constitutional doubts. Critics also highlight the absence of uniform standards for rebutting presumptions: while some courts accept circumstantial explanations, others require documentary proof, creating unpredictability and uneven application of justice. Thus, while the Act seeks to balance societal interest and individual liberty, the manner in which Sections 35 and 54 operate continues to raise deep constitutional concerns regarding arbitrariness, proportionality, and the risk of unjust deprivation of liberty under Article 21.

II. CONCLUSION

The presumptions of guilt under Sections 35 and 54 of the NDPS Act represent a radical departure from traditional criminal jurisprudence. While justified by the gravity of drug offences, these provisions must operate within constitutional boundaries. Judicial interpretation particularly in Noor Aga, Tofan Singh, and Baldev Singh has attempted to balance societal interests with individual rights under Article 21 by insisting on strict compliance with procedural safeguards and limiting the scope of statutory presumptions. Ultimately, the Act's compatibility with Article 21 depends not merely on statutory text but on its practical application. Ensuring fairness, due process, proportionality, and robust procedural safeguards is critical to preventing misuse and ensuring that the fight against drug trafficking does not compromise the fundamental values of the Constitution.

SUGGESTIONS

Improving the implementation of the NDPS Act requires stronger institutional safeguards, beginning with mandatory police training on search, seizure, and arrest procedures to ensure full compliance with statutory requirements such as Sections 42, 43, and 50. Proper training would minimise procedural lapses that often lead to wrongful arrests and violations of Article 21.

Strengthening of judicial scrutiny where trial courts should conduct an early-stage assessment of procedural compliance before allowing presumptions under Sections 35 and 54 to operate.

A more humane, Article 21 compliant framework also necessitates the distinction between drug addicts and traffickers, focusing on rehabilitation, de-addiction, and social reintegration for the former rather than punitive incarceration.

Mandatory video recording of searches and seizures to enhance further accountability should be implemented across all NDPS operations, ensuring transparency, preventing fabrication of evidence, and protecting both accused persons and police officers. These reforms collectively promote fairness, reduce the risk of wrongful conviction, and harmonise NDPS enforcement with constitutional guarantees.



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