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SEARCH AND SEIZURE UNDER NDPS ACT: LEGAL REQUIREMENTS AND COMMON VIOLATIONS

Jagrati Pant

"High stakes, harsh sentences, and zero tolerance—but not for procedural violations."

Introduction-

Every other day, headlines scream about massive drug hauls—heroin, opium, or charas seized from highways, homes, or hidden compartments. But behind every big bust lies a legal minefield. In 1985, India enacted the Narcotic Drugs and Psychotropic Substances (NDPS) Act to combat the growing threat of drug trafficking. Given its strategic location between the Golden Triangle and the Golden Crescent, India faced a significant challenge.

Despite the law's toughness, many accused individuals walk free, not because they're innocent, but because the police fail to follow proper procedures. Search, seizure, and arrest procedures are crucial to ensuring justice. When these procedures are ignored or botched, even the strongest cases can crumble.

In this blog, we'll delve into the legal framework governing search and seizure under the NDPS Act. We'll also highlight the most common procedural mistakes that can make or break a case. From the importance of following procedure to the consequences of negligence, we'll explore the intricacies of the law and its impact on justice.

LEGAL FRAMEWORK FOR SEARCH AND SEIZURE UNDER THE NDPS ACT

Search and seizure are important tools in the fight against drug trafficking, but they come with strict responsibilities. The NDPS Act of 1985, particularly Chapter V, provides a detailed legal framework for entry, search, seizure, and arrest, both with and without a warrant. While the law gives power to enforcement agencies, it also insists on safeguards to prevent misuse.

Section 42 – Entry, Search and Seizure in Private Premises

Empowered officers can search buildings or enclosed spaces without a warrant if they have prior written information or personal knowledge of NDPS violations. However: Written information must be recorded. It must be sent to a superior officer within 72 hours under Section 42(2). Failing to do this can undermine the trial; therefore, strict compliance is necessary.

Section 43- Search in Public Places

This section allows for seizure and arrest without a warrant in public places, including hotels, markets, and transport hubs. Officers do not need to record reasons as in Section 42, which makes it more flexible, but it must still be fair and transparent.

Section 50 – Personal Search of an Individual

Before searching a person, the officer must inform the accused of their right to have the search conducted in the presence of a Gazetted Officer or Magistrate. Failing to do this violates an important legal safeguard. Courts have consistently held that Section 50 is mandatory, and not following it may lead to acquittal, even in serious narcotics cases.

Section 52 – Handling of Arrested Persons and Seized Articles

After an arrest and seizure, the officer must: Inform the person of the reasons for the arrest. Take the person and seized items to the nearest police station or officer empowered under Section 53. Any delay or failure to comply with Section 52, although not as strict, can affect the credibility of the prosecution and may influence the trial's outcome.

MANDATORY COMPLIANCE OF SECTIONS 50 AND 42

Sections **50** and **42** of the NDPS Act are treated not as technicalities—but as non-negotiable safeguards meant to protect individual liberty and ensure fair play in criminal investigations.

Section 50 – Personal Search Must Be Informed

Section 50 gives an accused person a crucial right: before being searched, they must be clearly told that they have the option to be searched in the presence of a Gazetted Officer or Magistrate.¹

The Supreme Court in *Baldev Singh*² firmly held that this is not a mere formality—it's **mandatory**. If the officer fails to inform the accused or skips this step, the entire prosecution may collapse, no matter how much contraband is recovered.

Officers cannot rely on presumptions; they must state in court that the accused was informed and whether they waived the right. If they don't, the courts assume non-compliance.

Section 42 – Recording and Reporting is Key

Section 42 deals with searches **without warrant in private premises**. It requires officers to:

- Record any prior information in writing, and
- Forward it to a superior within 72 hours.

If the search happens at night, the officer must **record reasons** showing urgency. Failing to follow these steps is not a minor lapse—it can **fatally weaken the prosecution's case**.³

The courts have clarified: **total non-compliance is fatal**, while delays may be evaluated on a case-by-case basis. But the intent is clear—**accountability cannot be compromised**, especially when someone's liberty is at stake.

NON-COMPLIANCE OF MANDATORY PROVISIONS: SECTION 50 & 42

¹ Abdul Sattar v State, 1988 (2) Crimes 812.

² State of Punjab v. Baldev Singh, (1999) 6 SCC 172.

³ R.B. Pal, Saumya Chaube, Digest on NDPS Act, 1985 (Lexman Publication, Delhi, 1st edn., 2023).

The NDPS Act prescribes stringent procedures to ensure fairness during search, seizure, and arrest. However, **non-compliance with Sections 50 and 42 continues to jeopardize prosecutions and erode public trust in law enforcement.**

Section 50 – Safeguard During Personal Search

Section 50 mandates that a person being searched must be *informed of their right* to be examined in the presence of a **Gazetted Officer or Magistrate**. Courts have consistently held this to be a **mandatory** requirement.

In *Pauline Nalwoga v. Customs (2024)*⁴, the **Delhi High Court** quashed the case despite narcotics recovery because the accused was **not informed of her right under Section 50**. The court emphasized that this is not a mere formality but a **constitutional protection** against abuse.

The *Supreme Court in State of Punjab v. Baldev Singh*⁵ reaffirmed that **failure to comply renders the trial unsustainable**, as it leads to prejudice against the accused.

Section 42 – Recording and Reporting of Information

Section 42 ensures procedural discipline before search in private places. Officers must **record information in writing** and **send it to their superior within 72 hours**. Total non-compliance invalidates the entire case. In *Karnail Singh v. State of Haryana*⁶, the Supreme Court held that **total non-compliance is impermissible**, although minor delays with valid justification may be excused

CONCLUSION

Strict adherence to Sections 42 and 50 of the NDPS Act is not a mere technicality—it is a cornerstone of fair trial rights under Article 21. Procedural violations, including failure to inform the accused of their rights or delay in reporting, often lead to acquittals despite the presence of contraband. Courts have consistently reinforced that justice must be as much about the means as

⁴ Pauline Nalwoga v. Customs ,2024 SCC OnLine Del 2151.

⁵ SUPRA 1.

⁶ Karnail Singh v. State of Haryana, (2009) 8 SCC 539.

the ends. Without procedural integrity, the credibility of both evidence and the justice system is compromised, turning a protective law into a punitive tool.