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## **Judicial Trends in Drug Law Enforcement: Tracing and Forfeiture of Illegally Acquired Property Under the NDPS ACT**

Authors

Sukhjinder Singh

Ms. Divya Sharma



# **Judicial Trends in Drug Law Enforcement: Tracing and Forfeiture of Illegally Acquired Property Under the NDPS ACT**

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## **1.1 Introduction**

Drug trafficking poses one of the most serious threats to national security, economic stability, and public health. India's proximity to the Golden Crescent and Golden Triangle, two major drug-producing regions, has made it both a transit route and a destination market for narcotics. To combat this growing menace, the Narcotic Drugs and Psychotropic Substances Act, 1985<sup>1</sup> (NDPS Act) was enacted as the primary legislation to prohibit, control, and regulate the manufacture, distribution, and consumption of narcotic drugs and psychotropic substances.

The Act aims not only to punish offenders but also to trace and forfeit property acquired through drug trafficking. The inclusion of Chapter V-A through the 1989 Amendment introduced comprehensive provisions for the forfeiture of illegally acquired property, empowering authorities to identify and confiscate assets derived from illicit drug activities. This reflects a preventive approach — ensuring that offenders do not benefit from the proceeds of crime.

The judiciary has played a vital role in interpreting these provisions to ensure they align with constitutional guarantees under Articles 14, 20, and 21. Courts have emphasized that while the NDPS Act is stringent, its application must respect due process and natural justice, especially in matters of property forfeiture and burden of proof under Section 68J.

Judicial trends show a gradual shift from a purely punitive approach to a financial and preventive strategy, focusing on dismantling the economic base of drug trafficking. Despite strong legislative backing, challenges remain in enforcement due to complex financial investigations, procedural delays, and inter-agency coordination issues.

This project, therefore, examines the judicial trends in drug law enforcement with a focus on the tracing and forfeiture of illegally acquired property under the NDPS Act. It analyzes how Indian courts have shaped the interpretation and application of these provisions to balance stringent enforcement with fairness and justice.

The Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act)<sup>2</sup> was enacted as a response to the growing number of local and international obligations that are associated with drug addiction. This act signaled a substantial change toward a more punitive and authoritarian attitude, moving away from previous colonial restrictions that stressed income above control. This legislation was pushed forward by the United States government. Besides addressing the

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<sup>1</sup> Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985).

<sup>2</sup> See *Supra* Note 1.

issue of trafficking, the Act also made it illegal to possess or consume the substance, introduced mandatory minimum punishments, integrated clauses that reversed the burden of proof, and imposed stringent constraints on the conditions under which bail might be granted.<sup>3</sup> Even though this legal framework matched a global shift towards a zero-tolerance approach to drug control, it was rapidly met with opposition in the Indian context because it was punitive, had disproportionate effects on communities that were already marginalized, and did not place enough emphasis on rehabilitation.

Several legislative frameworks, including the Dangerous Drugs Act of 1930<sup>4</sup> and the Opium Acts of 1857<sup>5</sup> and 1878<sup>6</sup>, were essential in the formation of India's drug policy before the enactment of the National Drug Policy and Security Act (NDPS Act)<sup>7</sup>. The primary objective of this legislation was to exercise control rather than to outright prohibit the behavior in question. When it came to matters of public health, the colonial authorities placed a higher priority on the revenue generated by the sale of permitted drugs. During this period, substances like cannabis and opium were frequently used for religious, medical, or recreational purposes, with only a small amount of regulation from the government.<sup>8</sup> The consumption of alcohol was effectively decriminalized and incorporated into the cultural fabric, which stands in stark contrast to the Western point of view.

Concerns about the inappropriate use of these substances, on the other hand, increased as the individual achieved independence. According to Article 47 of the Constitution, the state is required to take action to outlaw the use of intoxicating drugs, except those that are used for medical purposes.<sup>9</sup> This laid the groundwork for subsequent legislation by establishing the ethical foundation. In contrast to the NDPS Act, which introduced a fresh constitutional directive that framed prohibition as a matter of public health and moral norms, the majority of the preceding law was primarily concerned with regulation and income.<sup>10</sup>

India's expanding participation in international drug control agreements, on the other hand, has emerged as the actual impetus for reform. The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,<sup>11</sup> which was signed in 1988, together with the Convention on Psychotropic Substances<sup>12</sup>, which was signed in 1971, and the Single Convention on Narcotic Drugs, which was signed in 1961<sup>13</sup>, have all been approved by India. The enactment of these restrictions resulted in the implementation of more stringent enforcement methods and included the criminalization of acts that are connected with drug use.

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<sup>3</sup> Himanshu Priyadarshi, "Legal Hurdles in Drug Crime Control: Challenges for Law Enforcement in India" 8(2) *International Journal of Law Management & Humanities* 1309–1319 (2025).

<sup>4</sup> Dangerous Drugs Act, 1930 (Act 2 of 1930).

<sup>5</sup> Opium Acts, 1857 (Act 13 of 1857).

<sup>6</sup> Opium Acts, 1878 (Act 1 of 1878).

<sup>7</sup> See *Supra* Note 1.

<sup>8</sup> Ajay Marwah, "Narcotics and Drug Abuse in India: Legal Control, Positive Measure and Failures" 8(1) *International Journal for Multidisciplinary Research* 1–13 (2026).

<sup>9</sup> Madhurima Sruti Sharma & Leena Chhabra, "Tracing the Origin and Significance of NDPS Act: A Historical Perspective" 13(4) *International Journal of Creative Research Thoughts* f545–f554 (2025).

<sup>10</sup> Mahendra Soni, "From Prohibition to Enforcement: Understanding Legal Intricacies in the NDPS Act, 1985" 2 *LawFoyer International Journal of Doctrinal Legal Research* 217–241 (2024).

<sup>11</sup> United Nations, *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988* (adopted on 19 December 1988, entered into force on 11 November 1990).

<sup>12</sup> See *Supra* Note 11.

<sup>13</sup> United Nations, *Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961* (United Nations, New York, 1961).

However, the Indian parliament chose to read these accords in the harshest manner possible, even though they allowed for reformative possibilities such as rehabilitation.<sup>14</sup>

The geopolitical dynamics, especially those that were shaped by the United States under the administrations of Ronald Reagan and Richard Nixon, had a significant impact on shaping the decisions that India made on its domestic policies. During the 1980s, the United States of America stepped up its global campaign against drugs, which resulted in nations like India adopting policies that were comparable to those of the United States. However, in the end, the political influence of the United States triumphed, even though India initially voiced worries about cannabis being classified among more potent narcotics.<sup>15</sup> It was during the government of Rajiv Gandhi that the National Drug Policy Act (NDPS Act)<sup>16</sup> was enacted in 1985. This act embodied both international influence and the growing worldwide consensus on a drug policy approach that is centered on deterrence instead of punishment.

In addition to making and trafficking narcotics, the National Drug and Prohibition of Substances Act (NDPS Act)<sup>17</sup> makes it illegal to use and possess even tiny amounts of narcotics for personal use. There are severe punishments that have been established: by Section 31A, the death penalty is applied for repeat offenders; a minimum term of ten years is prescribed for possession of commercial amounts.<sup>18</sup> Even though the initial attitude was eventually modified, the amendment that was passed in 1989 reaffirmed the government's determination to impose severe punishments for drug-related offenses. Furthermore, by Sections 35 and 54, the Act introduces presumptions of guilt, which shift the burden of proof and undermine the notion of being presumed innocent, which is a fundamental tenet in the field of criminal law.<sup>19</sup>

Due to the lack of procedural safeguards, there were instances in which arrests frequently resulted in extended durations of incarceration, particularly for individuals who were awaiting trial. The Act was made non-bailable for certain offenses by Section 37<sup>20</sup>, and the courts were directed to refrain from providing bail unless it could be demonstrated that the accused was innocent based on the appearance of the evidence. Options for pre-trial release were largely eliminated as a result of this act. Even though they were supposed to handle the caseload, the special NDPS courts ended up being overburdened. Because of this, there were instances in which people who were discovered to have as little as one hundred milligrams of heroin were subjected to years of incarceration before the conclusion of their trial.<sup>21</sup>

There have been major ethical and societal repercussions as a result of the legislation that criminalizes drug usage. According to several scholarly and legal evaluations, the legislation was insufficient in successfully distinguishing between users and traffickers. This was the conclusion reached by the majority of analyses. Many of the people who were detained under the Act were not traffickers; rather, they were people who were battling substance dependence.

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<sup>14</sup> Nirjala K & Lathika Sri S.P., "Analysis of India's Narcotic Control Laws", 12(3) *Journal of Emerging Technologies and Innovative Research (JETIR)* c174-c189 (2025).

<sup>15</sup> Rupneet Kaur & Parminder Singh, "Recent Trends in the NDPS Laws in India: Balancing Enforcement and Human Rights" 12(1) *International Journal of Food and Nutritional Sciences* 7669-7673 (2023).

<sup>16</sup> See *Supra* Note 1.

<sup>17</sup> See *Supra* Note 1.

<sup>18</sup> Srinivasan Gopal, "Compassionate Rehabilitation for Drug Users and Strict Action against Traffickers: A Legal Analysis under the NDPS Act, 1985" 8(3) *International Journal of Law Management & Humanities* 1548-1585 (2025).

<sup>19</sup> Ranjana Rajasri R, "India's War on Drugs: A Historical and Legal Examination of National and International Strategies for Prevention and Rehabilitation" 5(1) *Indian Journal of Legal Review* 765-780 (2025).

<sup>20</sup> Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985), s. 37.

<sup>21</sup> Deepa Dubey & Medha Singh, "Analysis of the Prosecution of Drug Addicts under the NDPS Act: A Victim Justice Perspective" XXVI(S2) *SEEJPH* 566-577 (2025).

This was especially true for those who were found with small amounts. On the other hand, the treatment they experienced was more akin to that of criminals than it was to that of those who were seeking medical attention.<sup>22</sup> A faulty attitude that views addiction as a criminal issue and, as a result, overlooks the requirement of public health programs is illustrated by this discrepancy between the two concepts.

With the revision to the NDPS Act that took place in 2001, an important milestone was reached. This amendment provided a punishment structure that was dependent on the quantity of the offense. The purpose of this classification, which divides the volume into small, intermediate, and commercial categories, was to ensure that the sentencing process is proportional. Through the use of official gazettes, the Central Government was granted the right to create quantitative restrictions.<sup>23</sup> Even though it helped to reduce the severity of penalties that were overly harsh in certain minor cases, the Act maintained mandatory minimum terms for bigger quantities and imposed criminal penalties for consumption, as described in Section 27.<sup>24</sup>

Despite these modifications, the administration of justice has frequently determined that it is necessary to intervene to uphold constitutional norms. In the cases of *State of Punjab v. Balbir Singh*<sup>25</sup> and *State of Punjab v. Baldev Singh*<sup>26</sup>, the Supreme Court of India found that some rights, such as Section 50, which requires that an individual be informed of their right to a search before a magistrate or gazetted officer, are basic and must be upheld. If compliance conditions were not met, the search and seizure would be deemed unlawful, which would result in the accused being granted the right to be acquitted. It was highlighted in the findings that the criteria of procedural fairness need to be increased in proportion to the severity of the penalty that is imposed.<sup>27</sup>

The incorrect implementation of Section 50 has been brought to light by certain other rulings.<sup>28</sup> When it came to the question of whether or not the term "personal search" embraced the investigation of containers, vehicles, or bags, the judges were divided among themselves. Several judges took a restricted view of it, concentrating on the restrictions that apply to a bodily search, while others urged for a more expansive interpretation to safeguard the rights of those who are accused. This doctrinal discrepancy was interpreted by the court in a way that led to ambiguity in the law, which in turn led to inconsistent acquittals and convictions.<sup>29</sup>

Another basic problem is the different burdens of proof that are being imposed. Sections 35 and 54 provide the assumption of mental intent and possession once it has been established that the property in question is physically owned.<sup>30</sup> Article 21, which protects due process, has been criticized for being in violation of this, which has led to condemnation. Whenever it is presumed that the accused is guilty and the process of getting bail becomes extremely

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<sup>22</sup> A. Singh, "NDPS Act 1985: A Study with Special Reference to Investigation" 5(2) *DME Journal of Law* 14–21 (2024).

<sup>23</sup> G. S. Tiwari, "Drugs Trade and Terrorism: An Assault on Human Rights" 45(1) *Journal of the Indian Law Institute* 25–37 (2003).

<sup>24</sup> Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985), s. 27.

<sup>25</sup> *State of Punjab v. Balbir Singh*, 1994 AIR 1872.

<sup>26</sup> *State of Punjab v. Baldev Singh*, AIR 1999 SUPREME COURT 2378.

<sup>27</sup> Sweta Kumari, Sunita, Navdeep Kaur, Palwinder Kaur, Rajvir Kaur & Rajnish Bishnoi, "Examining Drug Use and Misuse in India, and Evaluating Drug Control Laws" 27(1S) *African Journal of Biomedical Research* 156–167 (2024).

<sup>28</sup> Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985), s. 50.

<sup>29</sup> John Mohammad Wani, "Pursuit of Justice: NDPS Cases and Convictions" III(III) *Indian Journal of Integrated Research in Law* (2023).

<sup>30</sup> Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985), s. 35 & 54.

challenging, the accused is subject to some type of punishment before any conviction. As an alternative to relying on these assumptions, legal experts and advocates for public health have advocated for a fairer evidentiary standard.<sup>31</sup> In addition, it has been demonstrated that the NDPS Act has a disproportionately negative effect on communities that are not traditionally included. There is a significant proportion of people who are held under the Act who come from economically and socially underprivileged backgrounds, according to reports that have been compiled by legal aid committees and human rights organizations. People who are employed in daily wage labor, immigrants, and people who live in slum regions make up a large portion of the population of those who are now awaiting trial. As a result, the Act continues to reinforce systemic inequalities and makes it easier for underprivileged urban neighborhoods to be subjected to excessive police presence.<sup>32</sup>

Within the context of the pursuit of justice for adolescents and the rehabilitation of juvenile offenders, the Act presents several serious issues. At times, minors found in possession of drugs are perceived more as hardened offenders rather than individuals deserving of care and support. There is frequently a lack of cooperation between the juvenile judicial systems and the authorities responsible for NDPS implementation, which results in unfavorable outcomes for the youth. There is still a substantial lack of information regarding the development of programs that are focused on prevention and diversion.<sup>33</sup>

As a means of attempting to ameliorate some of these excesses, the amendment that was passed in 2014 included provisions that were focused on the treatment and rehabilitation of addicts. Through the classification of "essential narcotic drugs" for the sake of medical treatment, the framework intends to enable persons who need palliative care to have easier access to it.<sup>34</sup> By Section 64A, more lenient punishments have been imposed for criminals who voluntarily seek medical care during their sentence.<sup>35</sup> Despite this, the sections in question continue to be implemented insufficiently, and the overriding criminal philosophy of the Act has not been modified.

The policy of drugs on a global scale has seen a significant transformation over the past twenty years. Notable progress has been made toward the decriminalization or legalization of the use of cannabis for personal use in several countries, including Portugal, Canada, and several states in the United States. At the moment, harm reduction, substitution therapy, and reintegration are given higher priority than incarceration in the context of public health programs.<sup>36</sup> In contrast, India continues to adhere to a legislative structure that enforces penalties for the use and possession of narcotics, despite the growing body of information demonstrating that this strategy has not been successful in reducing the prevalence of addiction or trafficking.

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<sup>31</sup> Sweta Kumari, Sunita, Navdeep Kaur, Palwinder Kaur, Rajvir Kaur & Rajnish Bishnoi, "Examining Drug Use and Misuse in India, and Evaluating Drug Control Laws" 27(1S) *African Journal of Biomedical Research* 156–167 (2024).

<sup>32</sup> Sneha Upadhyay & Vipin Bhati, "NDPS Act of 1985: Drug Abuse, Cultivation, Trafficking & Legal Challenges" 13(12) *International Journal of Creative Research Thoughts (IJCRT)* e814–e820 (2025).

<sup>33</sup> "Asset Forfeiture under NDPS Act: Legal Framework for Property Attachment in Drug Trafficking Cases" (7 July 2025) [Bhatt & Joshi Associates](#).

<sup>34</sup> Pratibha Chauhan & Uma Sharma, "Narcotic Drugs and Psychotropic Substances in India: A Socio-Legal Appraisal of Enforcement, Policy, and Reform" 22 *Journal of Advances and Scholarly Researches in Allied Education* 288–293 (2025).

<sup>35</sup> *Monu @ Sandeep v. State (NCT of Delhi)*, Bail Appln. No. 672/2024, decided on 2 April 2025 (Del HC).

<sup>36</sup> Navneet Kaur & Nidhi, "Socio-Legal Dimensions of Drug Abuse in Chandigarh, Panchkula, and Mohali: A Study on Enforcement Gaps and Community Impact" 7(5) *International Journal for Multidisciplinary Research (IJFMR)* 1–14 (2025).

## **1.2. Research Objectives**

1. To examine the legal framework governing tracing, seizure, and forfeiture of illegally acquired property under the NDPS Act, 1985.
2. To analyze judicial interpretations and trends relating to forfeiture proceedings under the NDPS Act.
3. To evaluate the effectiveness of property forfeiture as a tool for combating drug trafficking and organized narcotics crimes.
4. To identify the challenges and suggest reforms for strengthening the enforcement of forfeiture provisions under the NDPS Act.

## **1.3. Scope of the Study**

1. To examine the legal framework governing tracing and forfeiture of illegally acquired property under the Narcotic Drugs and Psychotropic Substances Act, 1985.
2. To analyze judicial trends and landmark decisions of Indian courts relating to the identification, attachment, and confiscation of properties derived from drug trafficking.
3. To evaluate the effectiveness of enforcement agencies and procedural safeguards in implementing forfeiture provisions under the NDPS Act.
4. To assess contemporary challenges and suggest measures for strengthening asset-tracing and forfeiture mechanisms in combating narcotics-related crimes.

## **1.4. Significance of the Study**

1. The study examines how Indian courts interpret and apply provisions relating to tracing, attachment, and forfeiture of illegally acquired property under the NDPS Act, thereby highlighting evolving judicial approaches.
2. By analyzing forfeiture mechanisms, the study demonstrates how targeting the financial gains of drug traffickers can disrupt illicit drug networks more effectively than relying solely on arrests and seizures.
3. The research identifies practical and legal difficulties in tracing illicit assets, conducting financial investigations, and ensuring compliance with due process requirements.
4. The study contributes to ongoing discussions on improving financial investigations, asset recovery mechanisms, and the effective implementation of Chapter V-A of the NDPS Act.

## **1.5. Statement of Problem**

The Narcotic Drugs and Psychotropic Substances Act, 1985, provides a comprehensive legal framework for tracing, attachment, and forfeiture of properties derived from illicit drug trafficking through Chapter V-A. However, judicial decisions reveal inconsistencies in the interpretation and enforcement of these provisions, resulting in procedural challenges, delays, and concerns regarding due process and property rights. Despite the legislative objective of dismantling the economic foundations of drug trafficking, the mechanisms for identifying and forfeiting illegally acquired assets remain underutilized. Therefore, a critical examination of judicial trends in drug law enforcement is necessary to assess the effectiveness of property tracing and forfeiture provisions under the NDPS Act.

## **1.6. Hypothesis**

### **H<sub>0</sub> (Null Hypothesis):**

The judicial interpretation of the forfeiture and tracing provisions under the NDPS Act has not significantly strengthened the effectiveness of drug law enforcement against illegally acquired property.

## **H<sub>1</sub> (Alternative Hypothesis):**

The evolving judicial interpretation of the forfeiture and tracing provisions under the NDPS Act has significantly strengthened drug law enforcement by enhancing the identification, tracing, and confiscation of illegally acquired property.

### **1.7. Research Gap**

Existing studies on the NDPS Act primarily focus on drug offences, bail jurisprudence, and procedural safeguards, while limited attention has been given to the judicial interpretation of tracing, attachment, and forfeiture of illegally acquired property under Chapter V-A of the Act. There is a significant lack of research examining recent judicial trends, the effectiveness of financial investigations, and the practical challenges faced by enforcement agencies in identifying and confiscating drug-trafficking proceeds. This study seeks to bridge this gap by critically analysing judicial developments and the implementation of property forfeiture mechanisms under the NDPS Act.

### **1.8. Research Methodology**

This study adopts a doctrinal legal research methodology to examine judicial trends relating to the tracing, seizure, freezing, and forfeiture of illegally acquired property under the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). The research is based on the analysis of primary sources, including the NDPS Act, particularly Chapter V-A, judicial decisions of the Supreme Court and High Courts, and relevant statutory provisions governing asset forfeiture. Secondary sources such as books, journal articles, reports, commentaries, and government publications have also been consulted. The study employs an analytical and descriptive approach to evaluate judicial interpretation, procedural safeguards, evidentiary requirements, and emerging challenges in financial investigations and asset tracing under drug law enforcement.

### **1.9. The NDPS Act: An Overview**

The Narcotic Drugs and Psychotropic Substances Act of 1985 was passed in order to consolidate legislation that pertain to narcotic drugs and psychotropic substances, as well as to provide for severe punishments for offences that include the illegal sale of these substances. It applies not only to the entire nation but also to Indian nationals who are living outside of the country. For the purpose of improving its enforcement measures, the Act has been subjected to a number of revisions, most notably in the years 1988, 2001, and 2014.

### **1.10. Historical Background**

Before the enactment of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), India's legal framework for controlling narcotics was fragmented and outdated. The primary laws governing this area were the Opium Act, 1857<sup>37</sup>, the Opium Act, 1878<sup>38</sup>, and the Dangerous Drugs Act, 1930<sup>39</sup>. These legislations were enacted during the colonial period and were primarily focused on regulating opium cultivation and trade, without providing comprehensive control over the growing problem of narcotic drugs and psychotropic substances.

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<sup>37</sup> Opium Act, 1857.

<sup>38</sup> Opium Act, 1878.

<sup>39</sup> Dangerous Drugs Act, 1930.

In the post-independence period, as drug abuse and illicit trafficking began to rise globally, India recognized the need for a unified and stringent law. Furthermore, India is a signatory to several international conventions, such as:

1. The Single Convention on Narcotic Drugs, 1961
2. The Convention on Psychotropic Substances, 1971
3. The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

To fulfill its international obligations and to strengthen domestic enforcement, the Parliament enacted the NDPS Act, 1985, which came into force on 14 November 1985. The Act consolidated all previous laws and provided a comprehensive legal framework for controlling operations relating to narcotic drugs and psychotropic substances in India.

### **1.11. Major Amendments to the NDPS Act**

Since 1985, the NDPS Act has been amended multiple times to address emerging challenges and to align with international standards.

#### **(a) NDPS (Amendment) Act, 1988**

Introduced Chapter V-A dealing with forfeiture of illegally acquired property related to drug trafficking.

Established mechanisms for identifying, tracing, and confiscating drug-related assets.

Strengthened the powers of enforcement agencies.

#### **(b) NDPS (Amendment) Act, 2001**

Introduced the concept of graded punishment based on the quantity of the drug — distinguishing between small quantity and commercial quantity.

Reduced the severity of punishment for small quantity offenders while maintaining harsh penalties for large-scale traffickers.

Allowed courts to grant bail in certain cases, recognizing the need for proportionality and fairness.

#### **(c) NDPS (Amendment) Act, 2014**

Aimed to promote the medical and scientific use of narcotic drugs.

Empowered the central government to regulate essential narcotic drugs, improving access for medical purposes.

Streamlined procedures for authorization, licensing, and prescription of these substances.

#### **(d) NDPS (Amendment) Act, 2021**

Rectified drafting inconsistencies in earlier amendments, particularly in relation to Section 27A (financing illicit traffic).

Reinforced the penal framework while maintaining judicial discretion.

### **1.12. Significance of the NDPS Act**

The NDPS Act is one of the most stringent criminal statutes in India, reflecting the state's commitment to eliminating drug trafficking and abuse. It incorporates preventive, punitive, and rehabilitative dimensions, ensuring a holistic approach. The inclusion of forfeiture provisions indicates a shift from merely punishing offenders to disrupting the economic incentives behind drug crimes.

However, the law has also been criticized for its harsh bail conditions, strict liability provisions, and burden of proof reversal, which may conflict with principles of justice. Over the years, the judiciary has played a critical role in harmonizing the objectives of the Act with constitutional safeguards, ensuring that enforcement remains both effective and fair.

## **1.13. Institutional Framework**

The Act establishes the Narcotics Control Bureau (NCB) as the central agency responsible for coordinating and implementing drug law enforcement measures. It also authorizes the Directorate of Enforcement and other competent authorities to trace and forfeit illegally acquired property.

## **1.14. Tracing and Forfeiture of Illegally Acquired Property**

### **1.14.1 Concept and Legal Basis**

Chapter V-A of the NDPS Act, inserted through the 1989 Amendment, introduced provisions for the forfeiture of property derived from or used in illicit drug trafficking. Sections 68A to 68Z deal with this aspect, authorizing competent authorities to identify, seize, and forfeit such property.

### **1.14.2 Definition of Illegally Acquired Property**

Under Section 68B(g), “illegally acquired property” means any property obtained through the commission of offenses under the NDPS Act or through activities prohibited by it, whether directly or indirectly. It also covers assets acquired from the income of such illegal activities.

### **1.14.3 Procedure for Forfeiture**

The procedure involves several stages:

- 1. Identification and Notice:** The competent authority issues a notice to the person whose property is suspected to be illegally acquired.
- 2. Opportunity to Explain:** The person is given a chance to explain the source of income or property.
- 3. Decision and Confiscation:** If the explanation is unsatisfactory, the authority may declare the property forfeited to the government.
- 4. Appeal:** The decision can be appealed before the Appellate Tribunal under Section 68N.

### **1.14.4 Burden of Proof**

Section 68J shifts the burden of proof to the accused, requiring them to establish that their property was acquired through legal means. This reversal of the traditional rule of burden of proof reflects the stringent nature of NDPS enforcement.

## **1.15. Judicial Interpretation and Trends**

Indian courts have played a crucial role in interpreting the NDPS Act’s forfeiture provisions. The judiciary has generally upheld the constitutional validity of these provisions while emphasizing procedural safeguards to prevent abuse.

### **1.15.1 Protection of Fundamental Rights**

The judiciary has repeatedly held that while the NDPS Act imposes strict liability, it must operate within the limits of Articles 14, 20, and 21 of the Constitution. In several cases, courts have ensured that property forfeiture proceedings follow the principles of natural justice.

### **1.15.2 Emphasis on Due Process**

Courts have emphasized that forfeiture proceedings are civil in nature, not criminal, and thus require a lower standard of proof. However, the competent authority must still act fairly, giving the person an opportunity to be heard before passing any confiscation order.

## 1.16 Key Case Laws

### 1.16.1 Kartar Singh v. State of Punjab (1994) 3 SCC 569<sup>40</sup>

The Supreme Court upheld the stringent provisions of the NDPS Act, recognizing the gravity of drug-related crimes. It stated that procedural safeguards must not weaken the deterrent purpose of the law.

### 1.16.2 Mohd. Arif v. Union of India (1996) AIR SC 1270<sup>41</sup>

The Court held that the forfeiture of property under Chapter V-A is not penal in nature but preventive, aiming to deprive traffickers of their illegal gains. The burden lies on the accused to justify the lawful acquisition of assets.

### 1.16.3 Union of India v. Hassan Ali Khan (2011) 11 SCC 684<sup>42</sup>

The Supreme Court affirmed that the government can attach and confiscate property acquired from drug trafficking, even if such assets are held in the name of relatives or associates.

## 1.17 Tofan Singh v. State of Tamil Nadu (2020) 9 SCC 1<sup>43</sup>

In this landmark judgment, the Court clarified the evidentiary value of confessions recorded under Section 67 of the NDPS Act, stating that such confessions are inadmissible if not made before a magistrate, strengthening procedural fairness.

## 1.18 State of Punjab v. Balbir Singh (1994) 3 SCC 299<sup>44</sup>

The Court highlighted the importance of following mandatory procedural safeguards such as proper search and seizure, reinforcing the need for fairness even in stringent laws.

## 1.19 Challenges in Enforcement

Despite the robust legal framework, several challenges persist in tracing and forfeiting illegally acquired property under the NDPS Act:

**1. Complex Financial Structures:** Drug traffickers often use layered financial transactions and benami properties to conceal illegal income.

**2. Coordination Issues:** Poor inter-agency coordination between enforcement authorities hampers effective tracing of assets.

**3. Legal Loopholes:** Delays in adjudication and appeals reduce the deterrent impact.

**4. Human Rights Concerns:** Overly harsh provisions and procedural lapses sometimes lead to misuse or violation of rights.

**5. Lack of Expertise:** Limited training in financial investigation among law enforcement officials affects effective enforcement.

that enforcement practices respect due process and prevent arbitrary property seizure.

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<sup>40</sup> *Kartar Singh v. State of Punjab* (1994) 3 SCC 569.

<sup>41</sup> *Mohd. Arif v. Union of India* (1996) AIR SC 1270.

<sup>42</sup> *Union of India v. Hassan Ali Khan* (2011) 11 SCC 684.

<sup>43</sup> *Tofan Singh v. State of Tamil Nadu* (2020) 9 SCC 1.

<sup>44</sup> *State of Punjab v. Balbir Singh* (1994) 3 SCC 299.

## **1.20 Conclusion**

The Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) stands as India's central legal framework against the growing problem of drug trafficking and abuse. Its evolution through various amendments and judicial interpretations reflects a progressive shift from mere punishment to a preventive and financial approach, targeting the proceeds of crime that sustain the drug trade. The introduction of Chapter V-A on forfeiture of illegally acquired property in 1989 marked a turning point, focusing on dismantling the economic foundations of narcotics trafficking.

The judiciary has played a crucial role in interpreting these stringent provisions in line with constitutional safeguards under Articles 14, 20, and 21. Courts have maintained a careful balance between strict enforcement and procedural fairness, as seen in landmark cases like *Balbir Singh*, *Tofan Singh*, and *Hassan Ali Khan*. Through such judgments, the judiciary has reaffirmed that the fight against drugs must not come at the cost of justice or due process. However, enforcement continues to face challenges such as delays, lack of coordination among agencies, and difficulty in establishing the link between property and illicit activity. While the reversal of the burden of proof strengthens enforcement, it must be applied cautiously to avoid misuse.

In essence, the NDPS Act and its judicial interpretation represent a balanced approach—combining deterrence, fairness, and preventive measures. Strengthening inter-agency coordination, improving financial investigation capacity, and ensuring timely adjudication will further enhance its effectiveness. Only through a just and efficient enforcement mechanism can India successfully curb the drug menace while upholding the principles of the rule of law.

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