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A SOCIO-LEGAL ANALYSIS OF ACQUITTALS UNDER THE NARCOTIC DRUGS PSYCHOTROPIC SUBSTANCES ACT

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INTRODUCTION

The Narcotic Drugs and Psychotropic Substances Act, 1985 is a prominent socio legal law for the reason that it causes a damage not only to the society at large but it also poses a threat to the life of people, social order and even the danger to the international peace and order Socio legal laws are in general different from the normal criminal laws for the reason of their broad dimensions of causing a great harm to the society at large. Such a damage may be to social and economic health of the society. In this category The Narcotic Drugs and Psychotropic Substances Act, 1985is more serious a law and, therefore, it needs special dealing by the law makers and its administrators. It was in this background that The Narcotic Drugs and Psychotropic Substances Act, 1985was enacted in the year 1985[1] providing there under more stringent punishments going up to 20 years of imprisonments, provisions for minimum punishment to the tune of 10 years and getting such imprisonments, which include heavy fines, getting multiplied by 1.5 times of the punishments in repeated cases[2]. Furthermore, as in the case of socio-economic offences, the mens rea is not required to be proved, but presumptions in this regard are recognized, thereby causing an onus on the accused to prove his innocence[3].

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[1] The Statement of Objects and Reasons of The Act, 1985 not only underscored it but also reiterated the same in Amendment Acts of 1989, 2001 and 2014. Clause (2) of the objects and reasons (1985 Act) provided"2. In view of what has been stated above ---------- India has become a party."
In 1989 Amendment Act again emphasized in the opening paragraph of objects and reasons: "in recent years: ------the need to amend the law further strengthen it was felt"

[2] Sections 15to40 provide for penalties under the Act marking a sensible difference between different kind of narcotic drugs and psychotropic substances and also variations for recovery of small quantities, understandably for personal use of addicts, and the commercial quantities. In the case of latter, the punishment normally goes to 20 years of imprisonment and heavy fines from 1-2 Lakh rupees. Sections also prescribe for minimum punishment of 10year imprisonment

[3] Section 54 of the Act provides for this as under: 54 presumption from possession of illicit articles- in trial under this Act, it may be presume, 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 drugs or psychotropic substances or controlled substances; 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 35of the Act also clarified:
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.

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The object of this Act is to snub the trade of narcotic drugs and psychotropic substances so as to avoid menace of drug abuse[4]. With this end in view, the law provides for special provisions to deal with the perpetrators of this crime with iron hands.

The presumptions of commission of the offence are also aimed at ensuring the conviction of all criminals under The Narcotic Drugs and Psychotropic Substances Act, 1985. But contrary to this assumption, when these researchers gathered firsthand information of convictions under The Narcotic Drugs and Psychotropic Substances Act, 1985, they were surprised to see that there were large scale acquittals[5] as well whereby the trade of narcotic drugs was continuing unabated and increasing its proportions, resultantly taking away vitality of Punjab youth[6]. With an objective to identify the reasons for such acquittals contrary to the objective of law, the researchers conducted an analytical study of the decided cases in the district of Kapurthala and interviewed leading Advocates dealing with such cases .The sample of this paper turns to be an analytical study of 80 case files relating to the district Kapurthala which have been decided in last three years. Such files were collected from 4 leading Advocates having handled these cases i.e. 20 files from each Advocate. To seek clarification from the point of acquittal, all these 4 Advocates were interviewed by researchers and the information thus collected given in the shape of this article

Incidence of acquittal

From 80 case files studied for the purpose of this article, it has been found that conviction rate in NDPS cases is 67.5% that is 54 conviction cases out of sampled 80, making acquittals to the tune of 32.5% i.e. 26 files of the sample. The researchers again compared the data with the acquittals in the normal IPC offenses from the case files with the same Advocates. It was found that the acquittal in IPC offences went to the tune of 48%[7]. Although the acquittals in NDPS cases are less than those in IPC offences, but in the backdrop of strict statutory provisions of detailed procedure, stringent punishments couched on the presumption of guilt in NDPS cases, it was felt that even acquittal rate of 32.5% is really large and it needs to be strongly addressed keeping in mind the severe consequences thereof on accused and their trade.

Table1.1

The supreme court has also underlined the importance of Section 35 in its judgements, vig; karnail singh vs state of Rajasthan 2000 crilj9636: Madan Lal v state of Himachal Pradesh,AIR 2003 SC3542.

[4] Supra note 1.the Apex court in Raj kumar vs Union of India, 1991 outlined objective of the Act and referred to the gravity of drug problem having international dimensions and the crimes being against entire society which must be dealt with iron hands

[5] The acquittal rate in our society has come to 32.5% and in good many cases it is only on technical grounds.

[6] Newspaper reports:
Anshu Jain, "United Nation and Drug Abuse Control" In Singh ---------- ,P. 260 writes:
The Supreme Courts the recent judgment of union of India V. Mohan lal and another (2016) observes Under Para16:"The menance of drugs in this country has alarming dimensions and proportions. Studies been on conferences and seminars have very often shown that the menance is deep rooted not only because drug lords have the many power and transnational links but also because the enforcement agencies like the police and at whims of politicians in power help them in carrying on what is known to be a money spinning and flourishing trade"
Earlier, the Constitution bench of Supreme Court in Baldev Singh mentioned the ill effects of drug abuse, arising out of vitiating The Narcotic Drugs and Psychotropic Substances Act, 1985 as: "Drug abuse the social . While drug addiction eats in the vitals of the society, drug trafficking not only eats into the vitals of the economy of a country, but illicit money generated by the drug trafficking is often used for illicit activities including encouragement of terrorism……"

[7] Based on our sample study.

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Represent Cases of Acquittal and Conviction.

Sr.no	Classes	N.D.P.S	I.P.C	Total Nos of Cases
1	Conviction	54	26	80
2	Acquittal	41	39	80

Sources: - Field Study

Reasons of Acquittals

The analysis of case files has led us to identify four major reasons of acquittals in NDPS cases. Before we deal with the reasons, it is essential that a brief reference is made to the process in which NDPS cases initiate and is dealt with during the process of investigation and trials. For this purpose, our reference to the The Narcotic Drugs and Psychotropic Substances Act, 1985 makes it clear that NDPS cases start in two ways one, after information is received by the authorized officers from any source regarding the possession of any narcotics drugs and psychotropic substances[8]. In such cases the law requires that such information should be reduced to writing and brought to the notice of the senior competent officer of the department concerned[9]. It is after the permission of the Magistrate or the competent officer of the department concerned that recovery of the drug and the substance is made[10]. The second situation is that on the nakka by that concerned department a person is found in suspicious circumstances and the search and seizure is required to be made. The law provides that the search should be done by the competent officers in the presences of the gazetted officer or Magistrate[11]. Before this,

[8] Section 42(1)authorizes officers from central excise, narcotics, custom, revenue intelligence or any other department of the central Government including para-military forces or armed forces (so authorized by refer of central government) as well as officers from revenue, drugs control, excise, police or other department of state government (so authorized) to act on basis of his personal knowledge or information given by any person

[9] Section41 authorizes Magistrates for issuing warrants of search and arrest.

[10] Section 42 of The Narcotic Drugs and Psychotropic Substances Act, 1985authorizes the officers to taken down information in writing and to go ahead with search and seizure. However, 2014 amendment in 1st proviso mandates exercising such powers by sub inspectors and above officers in the case of drugs manufactured under licenses. The conditions of Section 50 require the permissions from the gazetted officer or Magistrate. Subsection (2) of 42 provides for giving information to immediate superior officers within 72 hours. The Supreme Court in Hamidbhai Ayambhai Malik v. State of Gujarat ,AIR 2009 SC 1378clarified:

"section 42 will be inviolable only if the search is made by the police officer or the concerned authority upon the prior information when such an information or intimation or knowledge comes to the notice of the investigating officer in the course of the regular patrolling or an investigation of some other offence, it is not necessary to follow in all cases the conditions incorporated in section 42."

[11] Section 50(1) for the purpose provides:

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 the nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

However , subsection (5) inserted to the section by the amendment of 2001 makes an alternative provision of search under section 100 of Cr.P.C. in the following words;

(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).

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the accused is required to be given an option as to before whom he wants to be searched. It may be a Magistrate or a gazetted officer, if the officer stopping the person on nakka is not himself gazetted officer[12]. Such an option is also reduced to writing and search is done before the officer opted for by the accused. If the accused is in possession of any contravening material, the law again requires that the mens rea shall be presumed in the case of such possession by the accused[13]. After this the information is required to be given to the senior officer of the department[14]. The material recovered is properly mixed and then sample taken therefrom for testing in the laboratory so as to ensure that the recovered substance is a narcotic drug and psychotropic substance banned under The Narcotic Drugs and Psychotropic Substances Act, 1985[15]. The law also provides for the recording of the statements during the investigation made by accused and the punch witnesses[16]. The cases is tried by the special courts normally on the day to day basis ,so that the trial process is completed within the short possible time and the accused is punished[17].Here again, it is provided under the Act that the sentence awarded by the court cannot be suspended ,remitted or reduced[18].

In the background of this process, the researchers had found that sections 41, 42,43and 50 of the Act become more important to be closely studied and followed by the officers conducting the raids[19]. Because a large scale of acquittals of such cases arises from the violation of these provisions, our study has revealed that the non-compliance of requirements mentioned in section 50 pertaining to the search officer is the most dominant reason for the acquittal[20]. In our case it turned to be 12 out of the26 acquitted cases making it to the tune of 46.2% of acquittals. The second major reason identified was acquittal arising from contradiction in the statements given by the witnesses and the investigating officers[21]. The acquittals in this category turn to be 7 out of 26 cases constituting 27.8% of the total acquittals. From the discussions with Advocates, it has been noted that such discrepancies and

[12] The provision of such an option has been made under Section 50(1) with the words "if such person so required" of good many interpretations of these words have been given by the Supreme Court to conclude that such an option is mandatory. In C. Ali v .State of Kerala 2000 Cr.LJ.3181(SC) it was held :

"The settled position of law is that the person to be searched under The Narcotic Drugs and Psychotropic Substances Act, 1985is required to be told about his right under Section 50 before he is searched and that is mandatory requirement. No presumption to that affect can be raised."

The Apex court has emphasized on the fulfillment of this requirement in letter and spirit. In Narcotics Central Bureau v.Sukh Dev Raj Sodhi, AIR 2011 SC1939,it was declared that more providing option to accused for being searched was not complete compliance of Section 50 but physical presence of accused is also mandatory and it must be proves. The Supreme Court reiterated it other cases as well namely, Jarnail Singh V. State of Punjab AIR 2011 SC 964 and state of Rajasthan v. Parmanand, AIR 2014 SC 1384. Our Field study has also revealed 5% acquittals on this basis were option was given by inspector mentioning his own name before home search could be done.

[13] Supra note 3.

[14] Section 50 (6)

[15] As per notification of the department and to make the substance sampled of same contend and quality.

[16] Section 53 provides for investing such officers with powers of officers- in- charge of a police station for investigating of such offences by the Central and State Government.

Section 53 A deals with relevancy of statements under certain circumstances. Bombay High Court has accepted even confessions before such officers as admissible in evidence being not violative of Section 25 and 26 of the Evidence Act, Nathu bhai Barbar bhai patel v. State of Maharashtra, 2001 Cr.L.J.536 (Bombay)

[17] Section 36 and 36 A

[18] Section 32 A

[19] As earlier discussed, these sections prescribe procedure of search and seizure etc

[20] Based on our field study

[21] Ibid.

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contradictions arise out of the ulterior motives of the investigated officers and long lasting litigations against the spirit of law[22]. Even the Supreme Court has issued guidelines that the proceedings of the case must be in session's mode i.e continuing for a particular session of 3-4 days so as to complete the process of recording of the witnesses[23].

Third major reason is improper sampling of the seized drug sent for testing and non-compliance of sections 42, 43[24]. The acquittal in this category goes to 15.4% i.e in 4 cases out of the sampled 26. The remaining acquittals in 3 cases of our study i.e 11.6% are the result of some other different reasons i.e. the improper possession and other infirmities in the cases like not proving beyond the reasonable doubt etc[25].

Table 1.2

Represents Reasons Of Acquittal

SR.NO	Reasons	Acquittals	Total in Figure	Total in %
1	Non-Compliance of S-50 of N.D.P.S	12	26	46.2
2	Contradictory statement by Witnesses and investigating officer	7	26	27.8
3	Improper Sampling OF the Seized Drugs	4	26	15.4
4	Other Reasons like improper possession and other infirmities	3	26	11.6

Sources:- Field Study

Conclusion and Remedies

From our scrutiny of the files and information gathered from the Advocates of our sample, it has been noted that the ignorance of concerned agencies which have been empowered to search, seizure and investigation of NDPS cases is largely responsible for acquittals. Long delays in the cases in violation of the spirit of the law and direction of the Supreme Court in this regard, also lead to the acquittals because the short memories of the persons lead to the contradictory statements which become beneficial to the accused of a crime of this category

Corruption and non answerability of the officials responsible for search and seizure and investigation

[22] Ibid.

[23] The Supreme Court observed in Thana Singh v. Central Bureau of Narcotics, 2013 Cr.L. J. 1262 (SC) citing short memories as the reason and relying on 309(2) of Cr.P.C. The Court directed p.1266 "It would be prudent to return to the erstwhile method of holding session's trials" i.e. conducting examination and cross examination of a witness on consecutive days over a black period of three to four days …… this Court directs the concerned courts to adopt the method of session's trials" and assign black dates for examination of witnesses."
Another observation of the Court was: '…… Besides , it often caused unnecessary repetition in terms of questioning ,and also places greater reliance on one's ever-fading memory ,than necessary……"

[24] Based on the field study.

[25] Ibid.

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also result in large scale acquittals. Proper storage for the purpose of avoiding recirculation of the drug for their abuse is also important under the law but a little care is taken of the provision of this Act and the observation of the Supreme Court in this regard in many cases[26]. The provisions of law are also not very simple and practical to meet all contingencies. As in the case of the search and seizure on the nakka, it becomes difficult and risky to take the person before Magistrate or gazetted officer as per the option of the accused and thereby it leads to good many acquittals. Even the requirement of search of a female accused by the female officer itself leads to the problem in some cases. All this results in production, supply and abuse of drugs and psychotropic substances continuing unabated and provision of law turning to be of a little use. The following suggestions, however, emerge out of the conclusions of our study:

1. Periodic training is required to be given to the officers dealing with the NDPS cases for the purpose of search and investigation as well as prosecution Such a training must include the information of law, the decision of Supreme Court and High Courts in this regard and procedural requirements which must be met to make a case fool proof and leading to conviction of accused.
2. The judicial officers should also be made to attend periodical trainings regarding the law of NDPS and its procedures. The need for trial in sessions as undercored by the apex court, must be ensured by the judiciary
3. The state and central governments must also pay due regard to the training needs, establishment of sufficient special courts and framing of required rules as per the need of the hour .They must realize that it is their duty to not only implement the laws in right perspective but also bear in mind that large scale acquittals under The Narcotic Drugs and Psychotropic Substances Act, 1985leads to law and order problems, health issues of the citizens and above all, terrorism, taking birth from such trade.
4. The answerability of the officers who fail to perform their duties properly and the same leading to the acquittal of the accused must be taken seriously by the centre and state governments .Each acquittal by The Narcotic Drugs and Psychotropic Substances Act, 1985 must be thoroughly investigated and the persons at fault must be dealt with in a befitting manner.
5. The requirement of law for proper storage and destruction of the seized narcotic drugs and psychotropic substances must be ensured by the Centre and State government agencies responsible therefore which is essential for avoiding the recirculation of the seized goods.

[26] Section 52-A.The Supreme Court observed in Union of India v. Mohan Lal and another in the case decided on 28/1/2016.