

Research Topic

*Section 8 (Prohibition, Control & Regulation) of
The Narcotics Drugs & Psychotropic Substances Act, 1985*



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**Critical analysis of “Section 8” (Prohibition, Control & Regulation) of
The Narcotic Drugs and Psychotropic Substances Act, 1985**

Overview of the Act

The Narcotic Drugs and Psychotropic Substances Act (the NDPS Act) passed on 16 September 1985. It came into force on 14 November 1985. Under the NDPS Act, it is illegal for a person to produce/manufacture/cultivate, possess, sell, purchase, transport, store, and/or consume any narcotic drug or psychotropic substance. The Act has been **amended** twice in **1989** and **2001**. The Act applies to all the citizens of India including non-resident Indians (NRIs) and to all persons on ships and aircraft registered in India.

Under the provisions of the act, the “Narcotics Control Bureau” was set up with effect from March 1986 in order to control, prohibit and regulate the production and consumption of narcotic drugs and psychotropic substances. The Act is designed to fulfil India's treaty obligations under the Single Convention on Narcotic Drugs, Convention on Psychotropic Substances, and United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Critical analysis of “Section 8 of NDPS Act, 1985”

Section 8 of the NDPS Act, 1985 explicitly prohibits the cultivation of opium, poppy, coca or cannabis plants as well as the production, manufacture, distribution including warehousing, transport, purchasing and selling of prohibited drugs and psychotropic substances. It also prohibits their financing as well as consumption and harbouring offenders guilty under the Act.

Under this section, even if a person may be miles and miles far from the products but in the event that proof is available that he had a hobby in or was concerned in unlawful importation of products he would be held liable for the offence. A person can also be held liable under this section if he entrusts some other person to transport the drugs on his behalf.

Exceptions to section 8:-

- i. Drugs like coca, opium or cannabis can be cultivated, produced, manufacture , posses, sell, purchase, transport, warehouse, use, consume, import or export in India or from India for medical or scientific purposes.
- ii. Nothing in this section shall apply to the export of poppy straw for decorative purposes.

Amendments to section 8 of NDPS ACT, 1985

- **In 1989**

An exception to section 8 was inserted with effect from 29 May, 1989.

- **In 2001**

“**Section 8A**” was inserted which deals with the prohibition of certain activities relating to property derived from offence.

Supreme Court Cases

SR No	<u>Name of the Case</u>	<u>Facts</u>	<u>Remarks (SC)</u>
1.	<p>Narcotics Control Bureau</p> <p style="text-align: center;">vs.</p> <p>Dilip Pralhad Namade</p> <p style="text-align: center;">[AIR 2004 SC 2950]</p> <p>Decided on -18.03.2004</p>	<p>Illegal transportation- Section 8 (c)</p> <p>Suresh Jain was found carrying 20,000 Mandrax Tablets while travelling in a car and was arrested under section 8 (c). The Trial court convicted the accused. The main issue of this case was the granting of bail to the respondent by a learned Single Judge of Bombay High Court which was questioned by the Narcotics Control Bureau. High court upheld the judgement but granted bail on the term that the direction given by the Special Judge for supply of copies of documents was not complied with.</p>	<p>The learned Additional Solicitor General submitted that while granting bail the provisions of Section 37 of the Act were not kept in view. There is a prohibition on the grant of bail in terms of Section 37 of the NDPS Act and only under the specified conditions bail can be granted. Non-supply of documents pursuant to the court's order is not one of the grounds on which bail can be granted.</p> <p>The Supreme Court found held that the scope and ambit of Section 37 of the NDPS Act was not kept in view by the High Court. Mere non-compliance of the order passed for supply of copies, if any, cannot as in the instant case entitle an accused to get bail</p> <p>Notwithstanding prohibitions contained in</p>

			Section 37. The S.C. found accused guilty under section 8(c), reversed the order of High court granting bail and directed the accused to surrender to custody forthwith.
2.	<p>Rajendra and Anr. vs. State of Madhya Pradesh</p> <p>[AIR 2003 SC 633]</p> <p>Decided on - 17. 12. 2003</p>	<p>Illegal possession and transportation- Section 8(c)</p> <p>23 & 17 kilograms of "Ganja" were recovered from 2 bags from 2 persons on a railway platform. Appellant faced trial for alleged commission of offences punishable under Section 8 read with Section 20(B) (1). The main question in the case was the non-compliance of the requirement of Sections 55 and 57. The learned counsel for the appellants submitted that there was violation of Sections 42 and 50 of the Act. The trial Court has referred to the evidence of the witnesses and held that articles were kept in Malkhana in safe custody and were sent for chemical</p>	<p>The Supreme Court found no infirmity in the conclusions of the trial Court and the High court regarding compliance of Sections 55 and 57 to warrant interference and considered it as illegal possession and convicted the accused guilty under section 8(c).</p>

		<p>examination after necessary orders by the Magistrate and, therefore, the requirement of Section 55 were complied with. The Trial Court recorded conviction and imposed sentence which was upheld by the High Court. The High Court after analyzing the evidence have come to hold that there was compliance of Section 42(2) in the sense that requisite documents were sent to the superior officer and hence section 42 had no application to the facts of the case.</p>	
3.	<p>Union of India (UOI) vs. Satrohan [AIR 2001 SC 1145] Decided on - 14.07.2008</p>	<p>Illegal Possession– Section 8 (c) 29 bags containing poppy straws were recovered from house in a raid conducted by Narcotics Department. The trial Court found the evidence adduced to be clear and cogent and directed conviction and imposed sentence and imposed sentence and convicted the respondent for offences punishable under</p>	<p>The appellant was convicted on the basis of the statement made by him under Section 67 of the NDPS Act, a question has been raised whether such statement made to an officer within the meaning of Section 42 of the said Act could be treated as a confessional statement and whether the accused could be convicted on the basis</p>

		<p>Section 8(c) and 15 of the NDPS Act, 1985. In appeal, the High Court directed acquittal on the grounds of non-examination of independent witnesses, lack of evidence to show exclusive ownership and a practically non-reasoned order holding that there was non-compliance of sections 42(2) and 50 of the Act.</p>	<p>thereof in the absence of any other corroborative evidence. The Supreme Court held that the High Court was clearly in error by setting aside the judgment of the trial Court and set aside the judgment of the High Court and restored that of the trial Court. The accused was convicted the respondent for the offences punishable under Section 8(c).</p>
4.	<p>Iqbal Moosa Patel vs. State of Gujarat [AIR 2011 SC 470] Decided on- 12.01.2011</p>	<p>Illegal Possession under Section 8 (c) Seizure of narcotic drugs and recovery of narcotic substance from truck driven by one of accused in which other accused was also travelling, clearly established. Recovery of narcotic substance from house of accused No. 1 to whom consignment was to be sold proved beyond reasonable doubt. Seizure of narcotic substance from bed room of accused No. 1 had no access except to accused No. 1. The trial court and</p>	<p>The Supreme Court upheld the judgement of the trial court and the High Court of conviction. It found accused No.1 alone was in possession and control of seizure. All the three accused persons not entitled to benefit of doubt. Conviction proper.</p>

		High Court convicted the accused & came to the conclusion that the statements made by all the accused persons except accused No.1 Iqbal Moosa Patel were voluntary and reliable.	
5.	<p>Ram Singh v. Central Bureau of Narcotics</p> <p>[AIR 2011 SC 2490]</p> <p>Decided on – 28.04.2011</p>	<p>Possession of Drugs</p> <p>Recovery of 2.1 kg of opium by Abdul Mazid, the District Opium Officer from a room adjoining the kitchen of a hotel. Appellant was working as servant in the hotel. The Trial court convicted him under Section 8 and sentenced him to undergo rigorous imprisonment for ten years and fine of Rs.1 lakh, in default to suffer rigorous imprisonment for two years. The order of conviction and sentence has been affirmed by the High Court in appeal.</p>	<p>The Supreme Court held that to hold a person guilty, possession has to be conscious. Control over goods is one of tests to ascertain conscious possession so also title. Servant of hotel cannot be said to be in possession of contraband belonging to his master unless it is proved that it was left in his custody over which he had absolute control. Impugned judgment of conviction and sentence is set aside.</p>
6.	<p>Alpesh Kumar v. State of Rajasthan</p> <p>[AIR 2004 SC 952]</p> <p>Decided On: 12.11.2002</p>	<p>Illegal possession of heroin. Accused found in possession of two cigarettes containing 500 gms which on analysis found to contain heroin. It can be inferred that same was possessed by</p>	<p>The heroin seized was only 500 mgms that too in the form of two cigarettes, it can be inferred that the same was possessed by the appellant for his personal</p>

		<p>accused for his personal consumption. Conviction of accused under S. 8 altered to one under S. 27. The appellant had challenged the seizure on the ground that the same is violative of the mandatory requirement under Section 50 of the 1985 Act. The trial court sentenced the appellant to undergo rigorous imprisonment for a period of 10 years with a fine of Rs. One lack.</p>	<p>consumption. The conviction imposed on the appellant by the trial court & the High Court under Section 8 read with 21 of the 1985 Act cannot be sustained. The decision of Trial court was upheld by the Supreme Court. The Supreme Court allowed the appeal partly and modify the conviction and sentence to one under Section 27 of the 1985 Act and imposed one year's rigorous imprisonment.</p>
7.	<p>Ashok Dangra Jaiswal vs. State of M. P [AIR 2011 SC 1335] Decided On: 05.04.2011</p>	<p>Offence under S.8, S.21- The appellant and the owner of Satyanarain Talkies is engaged in selling of smack powder. When the appellant was subjected to a personal search, three packets smack powder recovered. The trial court held all the three accused, including the Appellant guilty of offences punishable under Sections 8/21(b) of the NDPS Act and sentenced them. The High Court dismissed appeal filed by accused</p>	<p>Not clear where samples were laid or handled by how many people. Alleged narcotic substance seized from accused never produced before trial Court. No evidence to connect forensic report with seized narcotic substance. Accused entitled to benefit of doubt and acquitted. There is, no evidence to connect the forensic report with the substance that was seized</p>

		against order of the trial court.	from the possession of the Appellant or the other accused. Mere oral evidence as to their features and production of panchnama does not discharge the heavy burden which lies on the prosecution, particularly where the offence is punishable with a stringent sentence as under the NDPS Act. The Appellant as well as other 3 accused is entitled to the benefit of doubt and acquit him of the charges and set aside the judgments and orders passed by the trial court and the High Court.
8.	<p>Union of India v. Bal Mukund</p> <p>[AIR 2009 SC 1811]</p> <p>Decided on-31 March, 2009</p>	<p>S.8 , S.18 , S.67- Recovery of narcotics</p> <p>Respondent Nos. 1 and 2 were seen carrying cement gunny bags. They were searched. 10kg of Opium packed in 5 polythene bag of 2 Kg each from each of them were said to have been recovered. Confessional statements by accused &</p>	<p>Purported raid conducted early in morning. Large number of police officers including high ranking officers were present. Documents categorically show that accused were interrogated. Therefore, confessional statements cannot be said, in the backdrop of</p>

		<p>admissibility. The trial court relying on or on the basis of the purported confessions made by the respondents recorded a judgment of conviction and sentence. The High Court, however, reversed the said findings of the trial court opining:</p> <p>(i) Respondent Nos. 1 and 2 could not have been convicted on the basis of their own confessions, which had been retracted, as the same had not been corroborated by any independent witness.</p> <p>(ii) The purported confession made by the respondent Nos. 1 and 2 was not admissible against the respondent No. 3.</p> <p>(iii) The purported secret information having been recorded in writing, as is required under Section 42 of the Act, the prosecution is vitiated in law.</p> <p>(iv) A sample of narcotics having not been taken in terms of the Standing Instruction as also in compliance of Section 55 of</p>	<p>aforementioned events, to be made by them although they had not been put under arrest Court while weighing evidentiary value of such statements cannot lose sight of ground realities. Circumstances attendant to making of such statements should be taken into consideration. The S.C. held that the Purported confessions made by the respondent Nos. 1 and 2 could not in absence of other corroboration form the basis of conviction and acquitted the accused.</p>
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		the Act, the judgment of the learned Special Judge was unsustainable.	
9.	<p>State of Rajasthan Vs. Daul Daulat Giri</p> <p>[AIR 2009 SC 1592]</p> <p>Decided On: 28.04.2009</p>	<p>Section 8 – Possession of narcotic drug</p> <p>Opium seized from possession of accused. During a search, black-brown substance (opium) was recovered & the weight was found to be 6 kg. Samples of seized material properly sealed and kept in proper custody. Samples have also reached FSL with seals intact. The trial Court held that the accusation was established and convicted him. The High Court considered the fact that on the day when the samples were in the custody of one Jamnalal, the non-examination of aforesaid Jamnalal rendered the prosecution version unacceptable. Accordingly, the conviction was set aside and the respondent was directed to be acquitted.</p>	<p>The S.C. held that the High Court came to an attempt and unsustainable conclusion that because Jamnalal was not examined "possibility of the sample having been tampered with could not be ruled out". The conclusion is unsustainable in view of the FSL report which clearly stated that the seals were intact and matched with the specimen seals. There is no material to support the conclusion of the High Court that there was possibility of tampering with the samples. The observation as noted above clearly overlooks the clear statement of the FSL report that the seals were intact. Merely because employee in office of S.P. who was in possession of samples for only few hours was</p>

			not examined cannot be ground to acquit accused. The judgment of the High Court is unsustainable and set aside and that of the trial Court is restored.
10.	<p>Alakh Ram Vs. State of U.P.</p> <p>[AIR 2004 SC 2907]</p> <p>Decided On: 03.07.2012</p>	<p>S.8 (b) , S.20 Cultivation of opium poppy etc. 17 Ganja plants allegedly planted by the Appellant were recovered from his field. The trial court found him guilty under Section 8 & 20 and was sentenced to undergo three years imprisonment. He made an appeal to the High Court which upheld the lower court judgement.</p>	<p>There is no satisfactory evidence either oral or documentary to show that the appellant has a right over the property from which the Ganja plants were recovered. There is no evidence that the appellant cultivated these Ganja plants. They may have been sprouted there by natural process. It must be proved that accused cultivated prohibited plant and it is not enough that few plants were found in the property of accused. The Additional Sessions Judge wrongly convicted him as the evidence adduced by the prosecution was not carefully scrutinized by the Court. The High Court committed error in confirming the conviction</p>

			and sentence of the appellant. The S.C held that Alakh Ram was not guilty of the offence under Section 20 of the NDPS Act. His conviction and sentence was set aside.
11.	<p>Union of India (UOI) through Central Bureau of Narcotics Commissioner</p> <p>Vs.</p> <p>Aharwa Deen</p> <p>[MANU/SC/0918/2000]</p> <p>Decided On: 31.01.2000</p>	<p>Sections 8/18, NDPS Act.</p> <p>The Union of India is in appeal against the order of the learned single Judge of the Allahabad High Court, Lucknow Bench, Lucknow, granting bail to the respondent in case under Sections 8/18, Narcotic Drugs & Psychotropic Substances Act. Pursuant to the notice issued, the respondent has entered appearance.</p>	<p>The S.C held that there can be no justification for a counter-affidavit being filed in a case in hand, since on the face of the impugned order of the High Court granting bail cannot be sustained as the High Court has not looked into the provisions of Section 37 of the Narcotic Drugs & Psychotropic Substances Act. The High Court was totally in error in granting bail without even focusing its attention to the mandatory provision of Section 37 of the NDPS Act. The S.C. set aside the judgement of the High Court and allowed the appeal.</p>
12.	<p>Vijay Jain</p> <p>Vs.</p> <p>State of M.P.</p>	<p>Section 8, 20, 21, 52A of NDPS Act</p>	<p>The prosecution has not produced the brown sugar</p>

	<p>[(2013) 14 SCC 527]</p> <p>Decided On: 20.06.2013</p>	<p>Conducted raid & seized brown sugar from Nilesh. The learned Special Judge (NDPS), Indore by judgment dated 17th August, 2007, convicted the Appellants and sentenced them both for 10 years rigorous imprisonment and imposed a fine of 1 lakh on each. The High Court maintained the conviction and sentence and dismissed the appeals. Appellants then filed an appeal with the Supreme Court.</p>	<p>before the Court and has also not offered any explanation for non-production of the brown sugar alleged to have been seized from the Appellants. The seizure of the materials does not establish the seizure of the brown sugar from the possession of the Appellants, the judgment of the trial court convicting the Appellants and the judgment of the High Court maintaining the conviction are not sustainable. The S.C. set aside the impugned judgment of the trial court as well as the High Court and released the accused.</p>
13.	<p>Om Prakash Baba Vs. State of Rajasthan</p> <p>[AIR 2009 SC 2426]</p> <p>Decided On: 25.08.2009</p>	<p>Section 8, 18, 20(B) of NDPS Act</p> <p>Narcotic drugs search and seizure. Possession was found. Seizure of large quantity of drugs from house of accused. Ownership and possession of premises by accused not proved. Large number of persons were living in house</p>	<p>In this case except the retracted statements of the appellant to connect the appellant with the house in question, no other independent evidence is available to sustain the finding of the learned Special Judge extracted in the beginning and confirmed by the High</p>

		<p>searched. The trial Court convicted and sentenced the appellant on the finding that the ownership and possession of the contraband in question had been proved beyond doubt. An appeal taken to the High Court by the appellant did not succeed. The matter went before the Supreme Court by special leave.</p>	<p>Court. The S.C. held that no evidence to show that accused was in exclusive possession of contraband material seized. Accused entitled to be acquitted.</p>
14.	<p>Mohd. Alam Khan Vs. Narcotics Control Bureau and another [MANU/SC/0794/1996] Decided On: 20.02.1996</p>	<p>Section 8 and section 66 of the NDPS Act In a search, the officials seized 50,000 Mandrex tablets contained in a maroon coloured bag along with certain documents. The trial court convicted the appellant in respect of the seizure of 50,000 Mandrex and sentenced him to under rigorous imprisonment for 10 years and pay a fine of Rs. 1 lack. The Bombay High Court declined to interfere with the judgment of the trial court. Hence the appeal is filed before the Supreme Court.</p>	<p>In this case except the retracted statements of the appellant to connect the appellant with the house in question, no other independent evidence is available to sustain the finding of the learned Special Judge extracted in the beginning and confirmed by the High Court. The High Court was not right in holding that 'the learned Trial Judge was therefore right in holding that in view of Section 66 of the NDPS Act, the said document can be admitted in evidence and it goes to show that the said flat</p>

			<p>was owned by the appellant. In order to invoke the aid of Section 66, the prosecution should have established that the appellant is the owner and was in actual possession of the flat in question. The S.C. held that the prosecution failed to establish the ownership of the flat in question as belonging to the appellant and consequently the conviction and sentence challenged in this Appeal cannot be sustained. The conviction and sentence passed against the appellant are set aside.</p>
15.	<p>Murari Vs. State of Madhya Pradesh [MANU/SC/1254/2004] Decided On: 14.07.2004</p>	<p>Section 8 and section 18 of the NDPS Act Seizure of 360 gm of Opium. The Trial Court and the High Court, have threadbare discussed the evidence. The conviction recorded by the Trial Court has been confirmed by the High Court. No infirmity pointed out in the impugned orders. The Trial Court under Section 8/18 of the</p>	<p>The Supreme Court held that the Trial Court as well as the High Court have threadbare discussed the evidence and after placing reliance thereupon, the trial Court has recorded the conviction, which has been confirmed by the High Court. Learned Counsel appearing on behalf of the Appellant</p>

		<p>NDPS, 1985 and sentenced rigorous imprisonment for a period of ten years and to pay fine of Rs. 1 lakh. On appeal being preferred, the High Court confirmed the conviction and sentence of the appellant. No justification for interference. Hence this appeal by special leave was filed with the Supreme Court.</p>	<p>could not point out any infirmity in the impugned orders, as such it is not possible for us to interfere with the impugned orders. The appeal, accordingly, fails and the same is dismissed.</p>
16.	<p>D. Ramakrishnan Vs. Intelligence Officer Narcotic Control Bureau</p> <p>[AIR 2009 SC 2404]</p> <p>Decided On: 27.07.2009</p>	<p>Section 8,2,22,23,25 etc. of the NDPS Act</p> <p>Issue was with regard to prosecution of Appellant under Section 8(c) read with Section 22, 23, 25, 27A, 53, 53A and 58 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The appellant used to mail consolidated requirements by means of packing slips in the name of individual customers to the e-mail I.D. of the first accused. The first accused used to procure different drugs indicated by the appellant by the local pharmacy and pack separately as per packing slips and dispatch the same</p>	<p>Drugs and Cosmetics Act, 1940 does not deal with exports. The provisions of Customs Act do. The licensees, therefore, were, thus, required to comply with the specific requirements of the Act and the Rules. It is not denied or disputed that the appellant neither applied for nor granted any authority to export by the Narcotic Commissioner or any other Officer who is authorized in this behalf. The court, therefore, is of the opinion that the High Court is right & the appeal is dismissed.</p>

		<p>to the customers abroad through airmail and RMS post office at Coimbatore. The appellant and his co-accused was prosecuted under Section 8(c) read with Section 22, 23, 25, 27A, 53, 53A and 58 of the Act. It was urged that the appellant and his co-accused might have committed an offence under the Drugs and Cosmetics Act, 1940 but not under the Act or the Rules framed thereunder. The learned Special Judge as also the High Court, however, disagreeing with the said contention of the appellant herein rejected his application for bail.</p>	
17.	<p>Pon Adithan Vs. Deputy Director, Narcotics Control Bureau, Madras</p> <p>[AIR 1999 SC 2355]</p> <p>Decided On: 16.07.1999</p>	<p>Section 8, Section 21 & Section 50 of the NDPS Act</p> <p>Accused was found in possession of 150gms of heroin without a valid permit, convicted for offence punishable under Sections 8 and 21. Appellant contended that it cannot be said that sample which was examined by</p>	<p>The S.C. held that in view of above said facts there is no room for doubt. As the samples were prepared in the Court in presence of the presiding magistrate and were properly packed and court seal was applied on them and as the chemical analyst had also found the seal intact there is little</p>

		<p>chemical analyst was same as sent by Court. Samples were prepared in Court in presence of presiding magistrate & were properly packed and Court seal was applied to them. Chemical analyst had also found seal intact. The trial Court believed the evidence of and the confessional statement made by the appellant & convicted him. The High Court after re-appreciating the evidence held that the evidence of was reliable and sufficient to sustain the conviction of the appellant. Probably because the High Court found his evidence sufficient, it did not record any finding with regard to acceptability of the confessional statement of the appellant.</p>	<p>room for doubt that the sample which was examined by the chemical analyst.. In our opinion, the Courts below did not commit any error in holding that what was found from the appellant was heroin. The High Court did not commit any error in holding that what was found from appellant was heroin and convicted the appellant.</p> <p>Appeal dismissed.</p>
18.	<p>Saikou Jabbi Vs. State of Maharashtra [MANU/SC/0991/2003] Decided On: 03.12.2003</p>	<p>Section 8 (c) read with Section 21 of the NDPS Act The appellant, a Gambian national, was apprehended for carrying heroin in his baggage. Seizure was made of the heroine weighing</p>	<p>The S.C. held that the High Court was justified in holding that the provisions of Section 42(2) had been complied with. The court held that it is not inclined to accept the plea that there was</p>

		<p>about 1 kg. He was charged for offence punishable under Sections 21, 23, 28 and 29 of the Act and also Sections 135(1)(a)(ii) of the Customs Act. Accused pleaded innocence. He was tried in the Court of Special Judge for Greater Bombay who found that there was non-compliance with the requirement of Section 50 of the Act as he was not trade aware of his right to be searched before a gazetted officer or a Magistrate before the search was conducted. It was also held that the requirement of Section 42(2) to submit the gist of information to higher officer immediately was also not established. The accused was acquitted of all the charges. Appeal before the Bombay High Court which by the impugned judgment held the accused guilty for offences punishable under Section 8(c) read with Section 21 of the Act. The High Court held that Section 50 was not</p>	<p>non-compliance with the requirements of Section 55 of the Act. The appeal is dismissed.</p>
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		attracted to the facts of the case. Similarly, it was held that there was compliance of requirements of Section 42(2) of the Act.	
19.	<p>The Superintendent, Narcotic Control Bureau</p> <p>Vs.</p> <p>Parash Singh</p> <p>[MANU/SC/4659/2008]</p> <p>Decided On: 15.10.2008</p>	<p>Section 8 and Section 20 of the NDPS Act</p> <p>A complaint was filed under Section 8 of the Act alleging commission of offence punishable under Section 20(b) (i) of the Act. The High Court was of the view that a new offence was made out because a higher punishment was imposed. Stand of the appellant is that no new offence was created but what was provided for related to more stringent sentence. The High Court directed the trial court to frame charges under Section 20(b) (i) of the Act.</p>	<p>The High Court was not justified in holding that new offence was created. Before the amendment as well as after the amendment the ingredients of Section 8 remain same and there was no amendment in this provision. Only punishment for contravention in relation to cannabis plant and cannabis i.e. Section 20 of the Act has been amended by the Amendment Act. The appeal is, therefore, dismissed with clarification that no new offence was created by the Amendment Act. But at the same time no punishment higher than what was originally provided for can be imposed on the accused.</p>
20.	<p>Central Bureau of Narcotics</p>	<p>Section 8 & 18 of NDPS Act</p>	<p>The High Court has gone through their statements</p>

	<p style="text-align: center;">Vs. Bahadur Singh</p> <p style="text-align: center;">[MANU/SC/1110/2010]</p> <p style="text-align: center;">Decided On: 24.11.2010</p>	<p>17.450 kgs of opium was seized. Offence committed punishable under Sections 8 and 18 of the NDPS, 1985. The trial court on a consideration of the evidence convicted and sentenced Bahadur Singh, Respondent, to 15 years rigorous imprisonment and a fine of 2 lacs under Section 8/18 of the Act. The Rajasthan High Court set aside the order and judgment of the trial court and acquitted the accused. The Court has further held that the confession allegedly recorded at the instance of the accused could not be believed as the statement. There appeared to be a complete violation of Sections 42 and 57 of the Act.</p>	<p>carefully and has given a categorical finding that they differed with each other in material particulars. The evidence when read together makes the ownership of the Dhaba completely confusing and uncertain. We also find that no reliance can be placed on the confessional statement of the accused. The judgment of the High Court proceeds primarily on an appreciation of the evidence, we are not inclined to interfere in this matter. The appeal is dismissed.</p>
21.	<p style="text-align: center;">State of Rajasthan Vs. Chhagan Lal</p> <p style="text-align: center;">[MANU/SC/1008/2014]</p> <p style="text-align: center;">Decided On: 04.02.2014</p>	<p>Section 8,18, 42 of NDPS Act</p> <p>Brown Material was found inside the bag. When tested, it was found to be opium. The trial court convicted the accused. The High Court acquitted the Respondent of</p>	<p>The High Court has clearly recorded a finding of fact that the bag was taken out from the well after sunset and prior to sunrise. We have no reason to disbelieve this finding. if the officer had</p>

		<p>the offence Under Section 8 read with Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The High Court has upset the order of conviction and acquitted the Respondent is non-compliance of Section 42(1) of the NDPS Act.</p>	<p>reason to believe that a search warrant or authorization cannot be obtained without affording opportunity for the concealment of evidence (which, in this case, would have resulted in destruction of evidence), as per proviso to Section 42(1) of the NDPS Act, he could have conducted the search of the well after recording grounds of his belief. Section 42(2) requires that grounds of belief so recorded have to be communicated to the immediate superior official within seventy-two hours. In this case, there is nothing to establish that the officer had followed this procedure. There is nothing to establish that he recorded grounds of his belief and communicated them to his immediate superior. However, delayed compliance with</p>
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			satisfactory explanation about the delay will be acceptable if it is in compliance of Section 42. Since in this case, there is total non-compliance of Section 42 of the NDPS Act, the High Court has rightly set aside the conviction of the Respondent.
22.	<p>State of Rajasthan Vs. Parmanand and Anr.</p> <p>[MANU/SC/0158/2014]</p> <p>Decided On: 28.02.2014</p>	<p>Section 8, 18,29,42,50 of NDPS Act</p> <p>9 kg 600 gms opium was seized by the respondent. They were tried by the District Court for offences under Section 8, Section 18 read with Section 29. The Rajasthan High Court acquitted the Respondents. Section 50. Compliance of provision. Legality was questioned.</p>	<p>It was held by the court that if merely a bag carried by a person is searched without there being any search of his person then section 50 of N.D.P.S. Act will have no application. But if bag carried by him is searched and his person is also searched then Section 50 will have application.</p> <p>Communication of said right to person who is about to be searched is not an empty formality. Communication of this right has to be clear, unambiguous and the individual. The S.C. came to the conclusion</p>

			that breach of Section 50(1) of the NDPS Act has vitiated the search. The conviction of the Respondents was, therefore, illegal. The Respondents have rightly been acquitted by the High Court. It is not possible to hold that the High Court's view is perverse. The appeal is, therefore, dismissed.
23.	<p>Union of India (UOI)</p> <p>Vs.</p> <p>Shah Alam and Anr.</p> <p>[AIR 2010 SC 1785]</p> <p>Decided On: 11.06.2009</p>	<p>Sections 8,21 and 50 of NDPS Act</p> <p>Recovery of 100gms. Heroin. Two respondents Shah Alam and Mazzum Haq were held guilty of illegally possessing 100 grams of heroin each and were accordingly convicted by the trial court under Section 8 read with Section 21. In appeal, the Allahabad High Court, Lucknow Bench, set aside the judgment and order passed by the trial court and acquitted the respondents of the charge under Section 8/21 of the Act. The High Court set-aside the Trial</p>	<p>The S.C. held that that the alleged recovery of heroin from the respondents was made in complete violation of the provisions of Section 50 of the Act. Apart from this the non-examination of the two independent witnesses of the search and recovery was another grave omission by the prosecution. The highest court was satisfied that the High Court took the correct view of the matter and the judgment coming under appeal does not suffer from any infirmity. We find no merit in these</p>

		<p>Court judgment mainly on two grounds; one, recovery of heroin was made from the respondents without observing the conditions laid down in Section 50 of the Act in regard to search and the other, the non-examination of the two independent witnesses in whose presence the recovery and seizures were made.</p>	<p>appeals and those are accordingly dismissed.</p>
24.	<p>Abbas Khan Vs. Central Bureau of Narcotics [MANU/SC/1537/2009] Decided On: 14.01.2009</p>	<p>Section 8,18 & 27 of the NDPS Act Appellants were tried as 2.10 kgs of Opium and 8 kgs of Dodachura were also found in the truck. The special judge of the trial found all the four guilty under Section 18 of the Act and they were sentenced to undergo 10 years rigorous imprisonment with a fine of Rs. 1 lack each. In the appeal filed by the accused, the High Court confirmed the conviction.</p>	<p>The Supreme Court held that the accused could only be convicted under Section 18(b) of the Act. There is no evidence that they were dealing with any commercial quantity of these contraband articles. Therefore, we confirm the conviction. The court directed that the appellants to be released forthwith.</p>
25.	<p>State of Uttaranchal Vs. Rajesh Kumar Gupta</p>	<p>Section 8,9,19, 23 etc. of the NDPS Act 70 kgs pure phenobarbitone were recovered. Five</p>	<p>The Supreme Court held that the respondent is charged with a grave offence. It was, therefore,</p>

	<p>[MANU/SC/5034/2006]</p> <p>Decided On: 10.11.2006</p>	<p>medicines being allopathic drugs falling under Schedules G and H of Drugs and Cosmetics Act seized from his clinic. Two medicines mentioned in Entries 69 and 36 of N.D.P.S. Act. But none of them finds place in Schedule I to NDPS rules. Hence, the provisions of Section 8 of NDPS Act is not applicable though respondent charged for offences under Sections 8/22 of said Act. The said 5 drugs used for medicinal purposes. Chapter VIIA of N.D.P.S. Rules permits use of narcotic drugs and psychotropic substances for medical and scientific purposes. In view of exception contained in Section 8 read with Rules, Section 37 of N.D.P.S. Act would prima facie have no application. When prima facie provisions of N.D.P.S. Act not found applicable. Appellant was arrested on 13.8.2004 and since then he is in jail custody. Charges</p>	<p>all the more necessary to apply the principles of law strictly. A person cannot be denied the right of being released on bail unless a clear case of application of the 1985 Act is made out. He might have committed an offence which repulses out morality. He may ultimately be found guilty even for commission of an offence under the 1985 Act, but in a case of this nature when prima facie the provisions of the said Act are not found applicable particularly in view of the fact that he has been in custody for a period of more than two years now, in our opinion, it is not a fit case where we should exercise our discretionary jurisdiction under Article 136 of the Constitution of India.</p> <p>Once drugs are said to be used for medicinal purposes, they are acknowledge to be drugs coming within the</p>
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		<p>were framed against him under Section 8 read with Section 22 of the NDPS Act. An application for bail was moved by him before the Special Judge. It was dismissed. He filed an application for bail, however, before the High Court which was granted. Special Leave Petition was filed & the bail application was revived. The High Court was requested to dispose of the same expeditiously. By reason of the impugned order the said bail application has been allowed. In its order the High Court noticed that ordinarily applications for bail are required to be considered having regard to section 37 of the 1985 Act. It, however, opined that the drugs in question not being listed in the 1st Schedule appended to NDPS Act, the respondent cannot be said to have committed any offence under section 8 read with section 22 of 1985 Act.</p>	<p>purview of expression "medicinal purposes" and would be covered by the exception provided in Section 8 of the Narcotic Drugs and Psychotropic Substances Act, 1985.</p>
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26.	<p style="text-align: center;">State of Rajasthan Vs. Ratan Lal</p> <p style="text-align: center;">[MANU/SC/0742/2009]</p> <p style="text-align: center;">Decided On: 31.03.2009</p>	<p>Section 8, 18 of NDPS ACT</p> <p>The accused faced trial for alleged commission of offences punishable under Sections 8 and 18 of NDPS Act' for being in illegal possession of a large quantity of opium. The trial Court directed acquittal only on the ground that there was non-compliance with requirements of Section 50 of the Act. The State filed an application for grant of leave to file appeal against such judgment. The High Court dismissed the application holding that since there was non-compliance of mandatory requirement of Section 50 of the Act and there was no need for grant of leave.</p>	<p>Section 50 of the Act can have no application on the facts and circumstances of the present case as opium was allegedly recovered from the bag, which was being carried by the accused. The High Court did not examine the testimony of the witnesses and other evidence on merits. Accordingly, the matter has to be remitted back to the High Court for a fresh hearing of the appeal. The High Court has not considered the true effect of Section 50 of the Act. It would be appropriate to direct the High Court to hear the appeal on merits. Leave to appeal is granted to the appellant. State to file the appeal which shall now be heard by the High Court on merits.</p>
27.	<p style="text-align: center;">Noor Aga Vs. State of Punjab and Anr.</p> <p style="text-align: center;">[MANU/SC/2913/2008]</p>	<p>Section 2,8,23,25,35 etc. of NDPS Act</p> <p>Appellant who was an Afghan national was arrested and later on prosecuted under Sections</p>	<p>The High Court should have considered the question having regard to the stand taken by the appellant. Only because certain personal facts</p>

	<p>Decided On: 09.07.2008</p>	<p>22 and 23 of the Act allegedly for carrying 1 kg 400 grams of heroin as a member of crew of Ariana Afghan Airlines. 22 packets of polythene containing brown powder were allegedly recovered. The same was weighed; the gross weight whereof was found to be 1 kg. 400 grams. Representative homogeneous samples from each packet in small quantities were taken weighing 5 gms each. The learned Additional Sessions Judge convicted the appellant under Sections 22 and 23 of the Act and sentenced him to undergo rigorous imprisonment for 10 years and also imposed a fine of Rs. 1 lakh on him. The appellant filed an appeal before the High Court of Punjab and Haryana. The High Court dismissed the said appeal by a judgment.</p>	<p>known to him were written, the same by itself would not lead to the conclusion that they were free and voluntary. A fundamental error has been committed by the High Court in placing explicit reliance upon Section 108 of the Customs Act. Section 53A of the Act makes such a statement relevant for the purposes of the said Act. The observations of the High Court, thus, that confession can be the sole basis of conviction in view of Section 108 of the Customs Act, thus, appear to be incorrect. The High Court failed to take into consideration that a certificate issued under Section 110(1B) of the 1962 Act can be recorded as a certificate of authentication and no more; authority for disposal would require a clear direction of the Court in terms of Section</p>
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		<p>52A of the Act. The High Court failed and/or neglected to consider that physical evidence being the property of the Court and being central to the trial must be treated and disposed of in strict compliance of the law.</p> <p>The provisions of Sections 35 and 54 are not ultra vires the Constitution of India.</p> <p>“Section 35 and 54 of the Narcotics Act which imposes a reverse burden on the accused is constitutional as the standard of proof required for the accused to prove his innocence is not as high as that of the prosecution. The High Courts should be well advised to device ways and means for stopping recurrence of such a case where a person undergoes entire sentence before he gets an opportunity of hearing before this Court. The fact of recovery has not been proved beyond</p>
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			<p>all reasonable doubt which is required to be established before the doctrine of reverse burden is applied. Recoveries have not been made as per the procedure established by law. The investigation of the case was not fair. We, therefore, are of the opinion that the impugned judgment cannot be sustained which is set aside accordingly. Therefore, the appeal is allowed.</p>
28.	<p>Jitendra Panchal Vs. Intelligence Officer, NCB and Anr.</p> <p>[AIR 2009 SC 1938]</p> <p>Decided On: 03.02.2009</p>	<p>Section 8, 12, 23, 29 of NDPS Act</p> <p>The officers of the US Drug Enforcement Agency, along with officers of the Narcotics Bureau, India, seized a consignment of 1243 pounds equivalent to 565.2 kgs of Hashish in Newark, USA. The appellant was arrested in Vienna in Austria. The Deputy Director General of the Narcotics Control Bureau, hereinafter referred as 'the NCB', visited the USA and recorded the</p>	<p>The Supreme Court held that it is not inclined to interfere with the order of the High Court rejecting the appellant's prayer for quashing the proceedings initiated by the NCB and the prayer for interim bail on the ground of double jeopardy. It also held that the offence for which the appellant was convicted in the USA is quite distinct and separate from the offence for which he is being tried in India. The offence for which the</p>

	<p>appellant's statement. a complaint was filed by the NCB before the learned Special Judge, Mumbai, against Niranjan Shah, Kishore Joshi and two others under Sections 29/20/23/27A/24 read with Section 8/12 of 'the NDPS Act', in connection with the abovementioned incident. While the said Niranjan Shah and others were being proceeded with before the learned Special Judge in Mumbai, the appellant, who had been extradited to the USA, was tried before the District Court at Michigan, USA, in Case No. 04 CR 80571-1. On pleading guilty of the charge of conspiracy to possess with intention to distribute controlled substances, which is an offence under Section 846 of Title 21, United States Code (USC) Controlled Substances Act, the appellant was sentenced to imprisonment on 27th June, 2006, for a total term of 54 months. After serving out</p>	<p>appellant was tried in the USA was in respect of a charge of conspiracy to possess a controlled substance with the intention of distributing the same, whereas the appellant is being tried in India for offences relating to the importation of the contraband. While the first part of the charges would attract the provisions of Section 846 read with Section 841 of Title 21 USC Controlled Substances Act, the latter part, being offences under the NDPS Act, 1985, would be triable and punishable in India, having particular regard to the provisions of Sections 3 and 4 of the Indian Penal Code read with Section 3 of the General Clauses Act, which has been made applicable in similar cases by virtue of Article 367 of the Constitution. The offences for which the</p>
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	<p>the aforesaid sentence, the appellant was deported to India on 5th April, 2007, and on his arrival at New Delhi, he was arrested by officers of the NCB and was taken to Mumbai and on 10th April, 2007, he was produced before the learned Chief Metropolitan Magistrate and was remanded to judicial custody. On the appellant's application that the proceedings against the appellant in India would amount to double jeopardy, the learned Special Judge, Mumbai, rejected the appellant's contention upon holding that the charges which had been dropped against the appellant in the proceedings in the USA had not been dealt with while imposing sentence against him in the District Court of Michigan, USA. The Special Judge extended the judicial custody of the appellant and subsequently rejected his prayer for bail on 17th May, 2007. The</p>	<p>appellant was tried and convicted in the USA and for which he is now being tried in India, are distinct and separate and do not, therefore, attract either the provisions of Section 300 of the Code or Article 20 of the Constitution. Article from Nepal into India and exporting the same for sale in the USA. Referring to Section 3 & 4 of IPC, the S.C. held that a person liable by any Indian law to be tried for any offence committed beyond India is to be dealt with under the provisions of the Code, having regard to the fact that the provisions of the Code would also apply to any offence committed by any citizen of India in any place within and beyond India. In that view of the matter, we see no reason to interfere with the order of the High Court impugned in this appeal. The appeal is accordingly dismissed.</p>
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	<p>appellant then approached the Bombay High Court on 11th June, 2007, praying for quashing of the proceedings initiated by the NCB and also praying for interim bail on the ground of double jeopardy. On 13th September, 2007, a complaint was filed by the NCB against the appellant in the Court of Special Judge, Mumbai, against which the appellant filed Criminal Writ Petition No. 1038 of 2007, inter alia, praying for quashing of the said complaint. The Bombay High Court dismissed the writ petition upon holding that the ingredients of the offences with which the appellant had been charged in India were totally different from the offences with which he had been charged and punished in the USA. The High Court also held that the acquisition and possession of Hashish in India and importation of the same into India from Nepal</p>	
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		<p>and the export of the contraband out of India, as well as sale thereof in the USA, could not be said to be the subject matter of an offence under Section 846 read with Section 841 of Title 21 USC Controlled Substances Act, nor was the appellant subjected to prosecution in respect of any of such offences in the USA. Consequently, conspiracy for all those acts in India was not the subject matter of prosecution in the District Court, New York, USA. Similarly, the Special Judge, Mumbai, was not competent to deal with the offence' under Section 846 read with Section 841 of Title 21 USC Controlled Substances Act, nor was the District Court in New York competent to take cognizance of any of the offences alleged to have been committed under the NDPS Act, 1985. The High Court came to the conclusion that merely because the same set of</p>	
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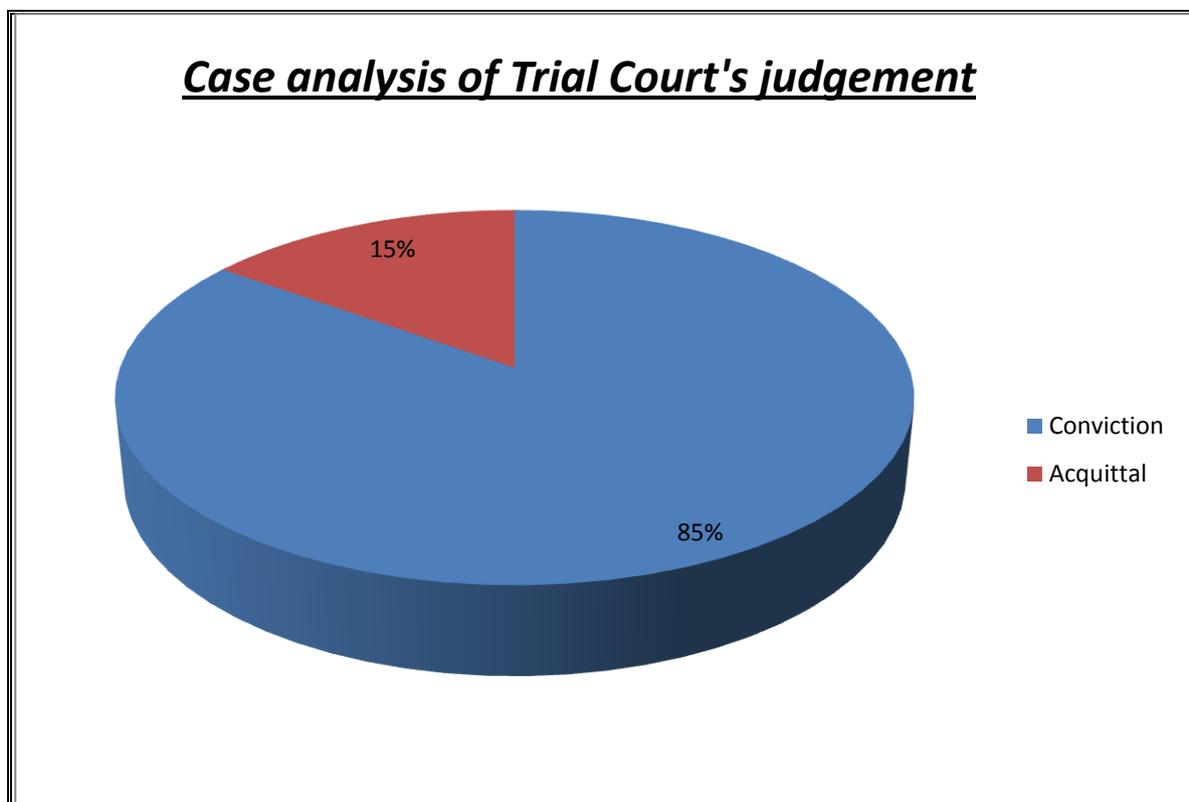
		<p>facts gives rise to different offences in India under the NDPS Act and in the USA under its drug laws, the different circumstances and the law applicable would not debar the Special Judge, Mumbai, from dealing with matters which attracted the provisions of the local laws and hence the application of the principle of double jeopardy was not available in the facts of the present case. It is against the rejection of such plea of double jeopardy by the High Court that the present appeal has been filed.</p>	
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An overall analysis of the conviction/acquittal under Section 8 of the NDPS Act, 1985 by the trial courts, the High Courts & the Supreme Court

1) The Trial Courts :-

Total percentage of conviction – 85%

Total percentage of acquittal – 15%



2) The High Courts :-

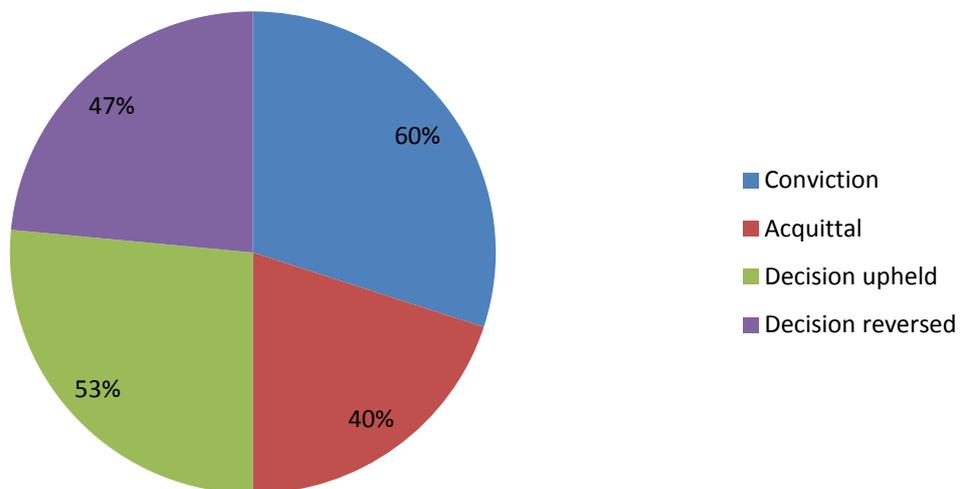
Total percentage of conviction – 60%

Total percentage of acquittal – 40%

Total percentage of decisions of trial court upheld by the High Courts - 53%

Total percentage of decisions of trial court reversed by the High Courts - 47%

Case analysis of High Court's judgement



3) The Supreme Court :-

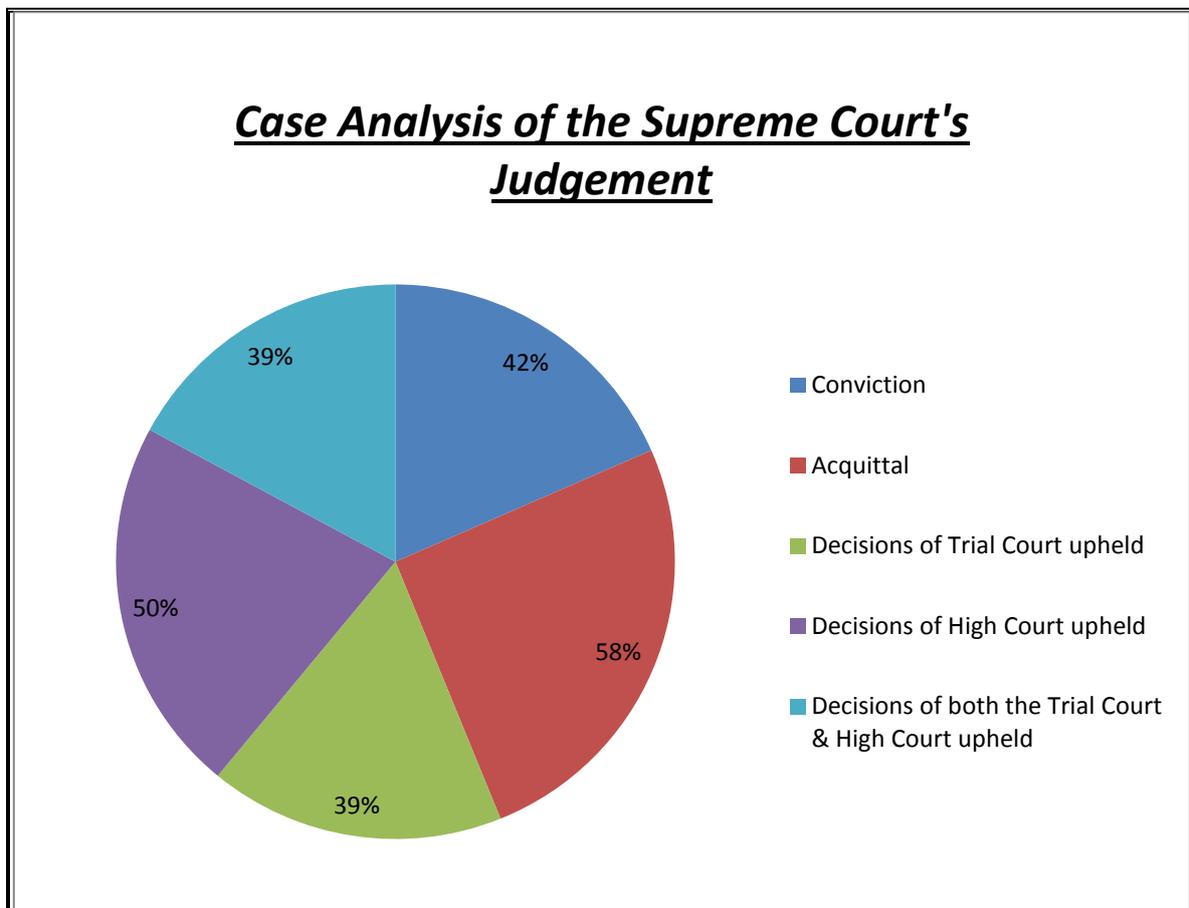
Total percentage of conviction – 42%

Total percentage of acquittal – 58%

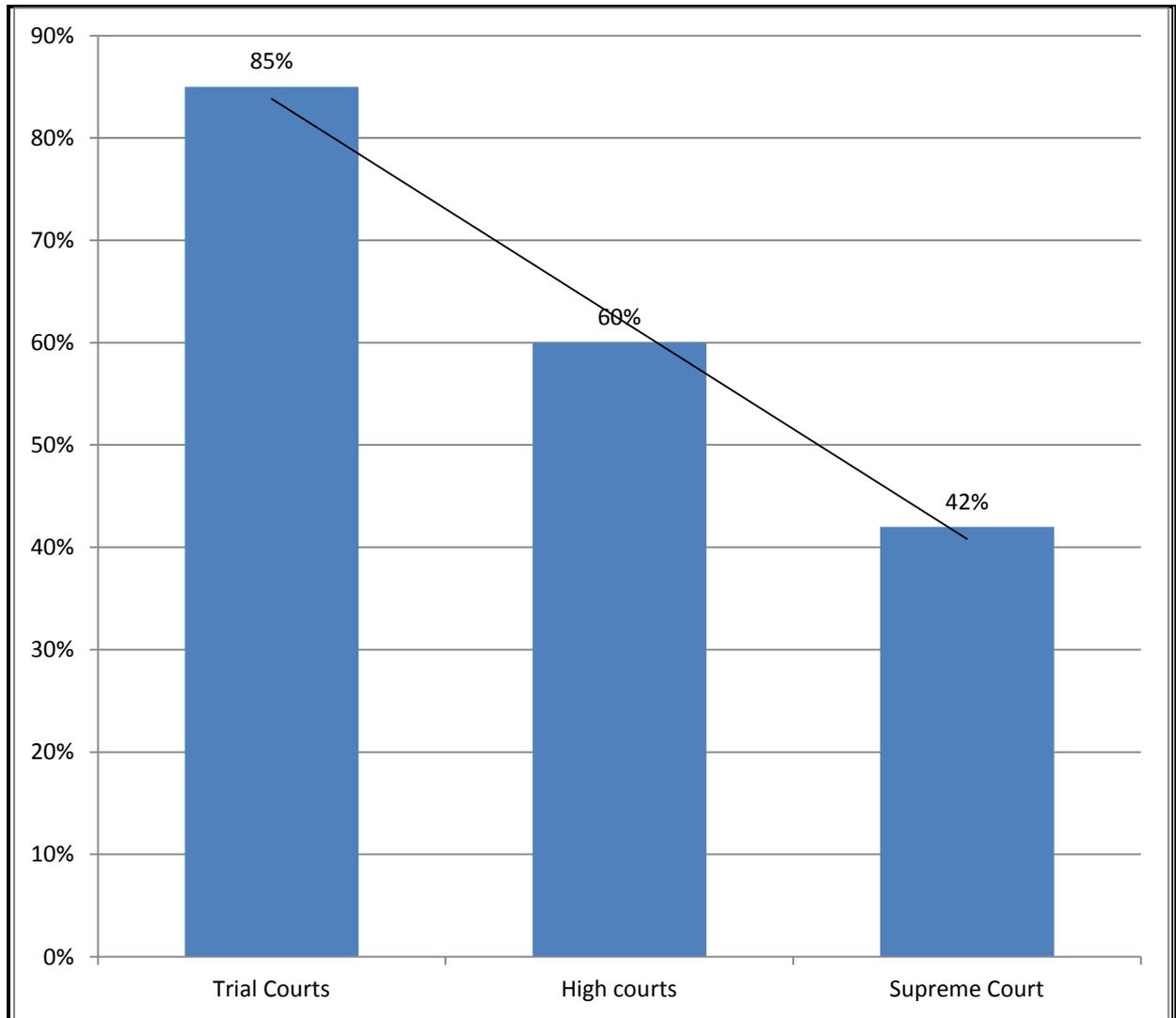
Total percentage of decisions of trial court upheld by the Supreme Court - 39%

Total percentage of decisions of the High Courts upheld by the Supreme Court - 50%

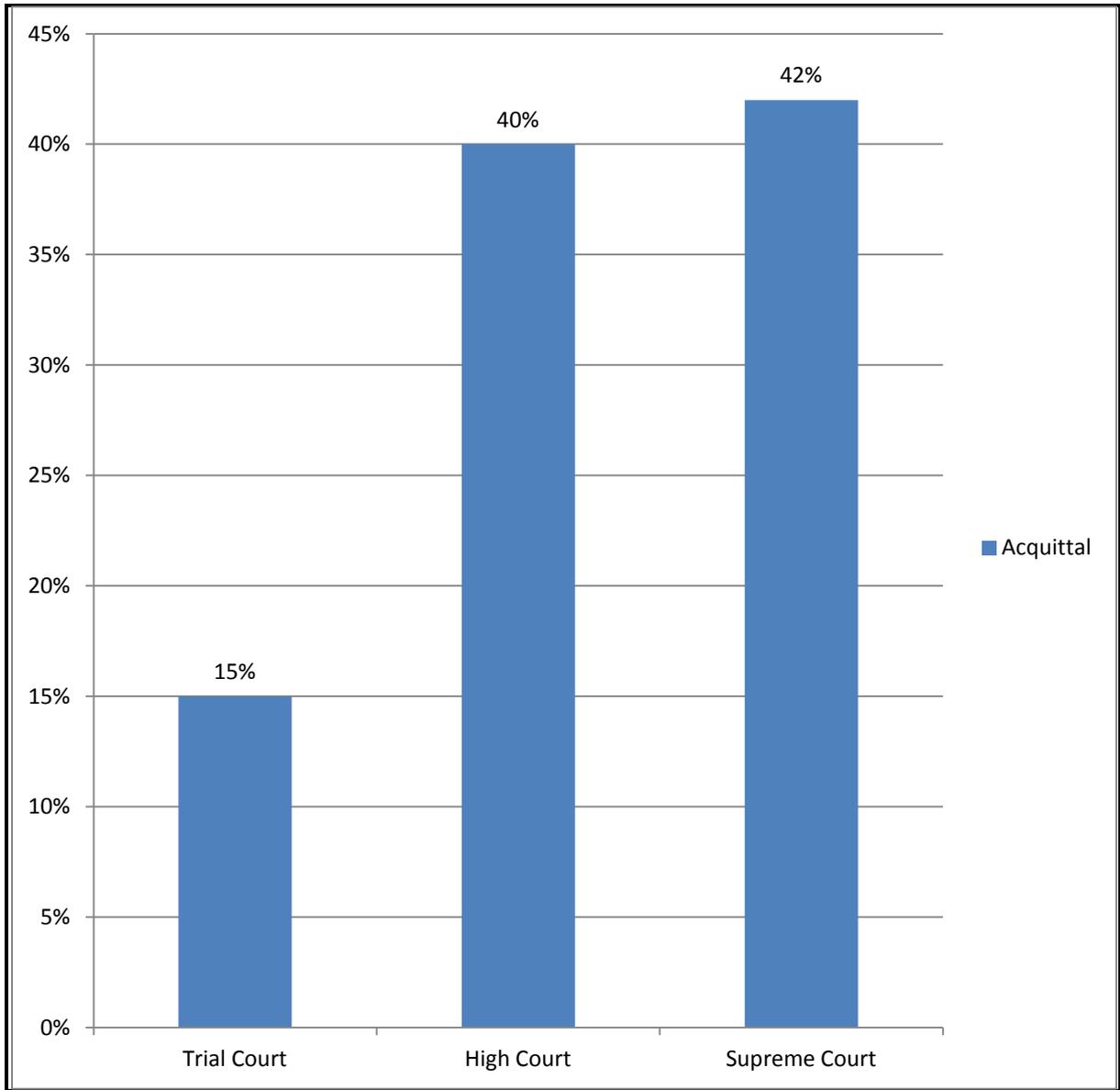
Total percentage of decisions of the trial courts & High Courts upheld by the Supreme Court - 39%



“Total Conviction Rate” under section 8



“Total Acquittal Rate”under section 8



“Total Conviction/ Acquittal Rate” under section 8 of the NDPS Act, 1985 by the trial Court, High Court & the Supreme Court

