INTERNSHIP REPORT

SUBMITTED TO

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SUBMITTED BY

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- NISHANT SIROHI

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Overview of the Act

The Narcotic Drugs and Psychotropic Substance Act (NDPS Act) was passed on September 16, 1985 and it came into force on November 14, 1985. The Act was enacted in order to forfeiture the property derived from or used in illicit traffic in narcotic drugs and psychotropic substances and most importantly to implement the provision of the International Convention on Narcotic Drugs and Psychotropic Substances to which India is a party. Under the NDPS Act, it is illegal for a person to produce, manufacture, cultivate, possess, sell, purchase, transport, store, and/or consumer any narcotic drug or psychotropic substance. The Act has been amended in 1989 and 2001. Being a *Special Act*, it applies to all the citizens and foreigners present in any part of India (including the State of Jammu & Kashmir) and on ships and aircraft registered in India.

This Special Act contain *SIX* Chapters and *EIGHTY – THREE* Sections dealing with various heads of Definitions, Offences, Penalties, Procedure and Miscellanies Rules etc. Under the provision of this 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.

Analysis of Section 2 of the Act

Under the *Section 2* of this Special Act of 1985, more than twenty – nine terms are defined in the clauses and sub – clauses, which are essentially required in dealing with the matters/issues related to Narcotics Drugs and Psychotropic Substance.

Though Section 2 is an extensively inclusive clause containing almost every required definition, but at many instances Supreme Court has to come forward to re – define or interpret the law which is also the nature of law.

Under the *2001 Amendment Act*, the classification of quantity of narcotics drugs or psychotropic substance was defined into "small quantity" and "commercial quantity" in Section 2 (xxiia) and Section 2 (viia) respectively. The division resulted in defining the

amount of punishment particularly in both the quantities and also for the third quantity that is in between.

Under the *Narcotics Drugs and Psychotropic Substance (Amendment) Act 2014*, parliament includes Section 2 (viiia) i.e. “essential narcotic drug” which the Central Government notified for medical and scientific use. This addition or amendment is highly applauded because under this head, drugs identify as essential will be subject to Central Rules Section 9 (1)(a), which will apply uniformly throughout the country, bringing to an end the widely and inept practice of obtaining multiple state licenses for possession, transport, sale, distribution, use and consumption. By the Amendment of 2014, the object of the NDPS Act has been broadened from containing illicit use to promoting the medical and scientific use of narcotics drugs and psychotropic substance.

Section 2 of the NDPS Act 1985 does not define “person” and hence the Supreme Court of India in its landmark judgment of State of Himachal Pradesh v. Pawan Kumar with State of Rajasthan v. Bhanwar Law [AIR 2005 SC2265] observed that:

“…the word has to be understood in a broad commonsense manner and, therefore, not a naked or nude body of a human being but the manner in which a normal human being will move about in a civilized society. Therefore, the most appropriate meaning of the word "person" appears to be - "the body of a human being as presented to public view usually with its appropriate coverings and clothings". In a civilized society appropriate coverings and clothings are considered absolutely essential and no sane human being comes in the gaze of others without appropriate coverings and clothings. The appropriate coverings will include footwear also as normally it is considered an essential article to be worn while moving outside one's home. Such appropriate coverings or clothings or footwear, after being worn, move along with the human body without any appreciable or extra effort. Once worn, they would not normally get detached from the body of the human being unless some specific effort in that direction is made. For interpreting the provision, rare cases of some religious monks and sages, who, according to the tenets of their religious belief do not cover their body with clothings, are not to be taken notice of. Therefore, the word "person" would mean a human being with appropriate coverings and clothings and also footwear.

10A bag, briefcase or any such article or container, etc. can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such. They cannot even remotely be treated to be part of the body of a human being. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, *a thaila, a jhola, a gathri,* a holdall, a carton, etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or hung on the shoulder or back or placed on the head. In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the ambit of the word "person" occurring in Section50 of the Act”.

2. Interpretation of Section 2 in the Supreme Court Cases (from 1989 - 2015).

Total 228 cases (of Division Bench, Three Judges Bench and Five Judges Bench) under the Narcotic Drugs and Psychotropic Substance Act 1985 are analyzed and out of these 228 Cases, Supreme Court of India interprets Section 2 in total of 25 cases which are discussed below:

Sl.No.	Name of Case and Citation	Issues	Remarks (SC)
1.	**Durand Didier v. Chief Secretary of Union Territory of Goa** **[AIR1989 SC 1966]** **(Decided on 29.08.1989)**	Appellant convicted under Section 18, 20, 21 and 27 of NDPS Act. Sentenced to 10 year rigorous imprisonment and a fine of Rs. 1,00,000/- or in default, further 1 – 6 year rigorous imprisonment. The criticism leveled by the defense counsel that the evidence of P.W. 6 is not worthy of acceptance since she has admitted that she does not know the difference between the narcotic drugs and psychotropic substances.	Appeal is dismissed by the Supreme Court. The sentence and conviction in full accord with the facts and circumstances of the matter and hence was upheld. [The excuse that the accused does not the difference of legal parlance as defined under Section 2 (xiv) and (xxii) is no ground for ruling out the evidence].
2.	**Ganga Hire Purchase Pvt. Ltd. v. State of Punjab and Ors.** **[AIR 2000 SC 449]** **Decided on 07.04.1999**	Question arises that for consideration, whether on account of the hire purchase agreement, the appellant can be held to be the owner within the ambit of Section 60(3).	No merit in appeal, dismissed by the Supreme Court. In the absence of any definition of 'owner' in the NDPS Act, it would be reasonable to construe that the expression 'owner' must be held to mean the "registered owner" of the vehicle in whose name the vehicle stands registered under the provisions of the Motor Vehicles Act.
3.	**Hussain vs. State of Kerala** **[[1999] Supp 4SCR189]**	Appellant convicted under Section 2, 8, 20, 21, 27, Rule 66 of NDPS Act. Sentence to 10 year	Allow the appeal and quash the judgment of High Court. The District Medical Officer opined that "Buprenorphine

	Decided on: 27.10.1999	rigorous imprisonment and a fine of 1,00,000/-. The issue was whether the substance recovered was a narcotics drug or a psychotropic substance.	tidigesic" is a manufactured drug and the trial court proceeded on that premise and found him guilty, convicted him and sentenced. Supreme Court observed that it is necessary for us to consider whether the said substance is a narcotic drug as defined in the Act, for, it is easily discernible from Item No. 92 of the Schedule to the Act that "Buprenorphine" is a psychotropic substance. We may point out that the aforesaid Item No. 92 had been added to the list of psychotropic substances by the Notification dated 26.10.1992. The offence in this case I alleged to have been committed on 25.06.1994. Therefore, no doubt that the substance recovered from the appellant is a psychotropic substance.
4.	**N.P. Basheer v. State of Kerala** **[2004 CriLJ1418]** **(Decided on 09.02.2004)**	Appeals have been placed before the court for deciding a question of law as to the Constitutional validity of the rationalization of structure of punishment under the Act providing graded sentences liked to quantity of narcotic drugs in relation to offence committed.	Appeal stands disposed off accordingly. [The Act introduced the concept of "commercial quantity" in relation to narcotic drugs or psychotropic substances by adding Clause (viia) in Section 2, which defines as any quantity greater than a quantity specified by Central Government by notification in official gazette. Further, the expression "small quantity" is defines in Section 2 (xxiia), as any quantity lesser than the quantity specified in the notification. Under the rationalized sentencing structure, the punishment would vary depending on whether the quantity of offending material was "small quantity", "commercial quantity" or something in between. This is

			the effect of the rationalization of sentencing structure carried out by the Amending Act, 9 of 2001 in Section 27. On October 9, 2001, a notice specified 239 Narcotics Drugs and Psychotropic Substances On the basis of quantity and seriousness, cases divided into three categories The amendment not applicable to pending cases and on cases whose trials are concluded on 2.10.2001].
5.	**State of Himachal Pradesh v. Pawan Kumar** **[2004CriLJ4614]** **Decided on 27.09.2004**	Appellant convicted under Section 18 of the NDPS Act. Sentenced by Sessions Judge to undergo rigorous imprisonment for 10 years and fine in the sum of Rs. 1,00,000/- and in default of payment of fine to undergo further rigorous imprisonment for two years. The high Court by the impugned judgment has set aside the conviction of the respondent. The High Court excluded the report of the opinion of Chemical Examiner from consideration and in absence thereof, there is no other evidence to establish that the material recovered from the possession of the accused was 'opium'.	The matter was referred to a larger Bench. [As per Mr. Justice Y. K. Sabharwal & Mr. Justice Arijit Pasayat]: 'Opium' is defined in Section 2(xv) of the NDPS Act. Rule 2(c) defines the expression 'chemical examiner' to mean the Chemical Examiner or Deputy Chief Chemist or Shift Chemist or Assistant Chemical Examiner, Government Opium & Alkaloid Works, Neemuch or, as the case may be. The 'chemical examiner' of the Kandaghat Laboratory come within the definition of expression of 'chemical examiner' under Rule 2(c)and there are two notification one dated 14th April, 1982 and the other dated 9th April, 1984 issued by Government of Himachal Pradesh appointed the Kandaghat Laboratory as Chemical Examiner for the whole State of Himachal Pradesh with immediate effect in public interest.
6.	**Amarsingh Ramjibhai Barot v. State of Gujarat**	Appellant and deceased were individually and jointly convicted under Sections 17, 18, 21 and 29	Leave granted by the Supreme Court. Since the evidence does not

	[2005 CrLJ4521] **Decided on 19.09.2005**	of the NDPS Act. Sentenced to 5 year rigorous imprisonment and a fine of Rs. 35000/- with a default sentence and 10 years with a fine of Rs. 1,00,000/- each together with a default sentence. Both the punishments were directed to run concurrently. It was contended that the High Court gave an impugned judgment as it fell into an error in taking the total quantify of the offending substances recovered from the two accused jointly and holding that the said quantity was more than the commercial quantity, warranting punishment under Section 21 of the NDPS Act.	indicate that the substance recovered from the appellant would fall within the meaning of Section 2 (a), (b), (c) or (d) and hence the residuary clause of Section 2 (e) would take into its sweep all preparations containing more than 0.2 per cent of morphine. The Forensic Science Laboratory report proves that the substance recovered from the appellant had 2.8 per cent anhydride morphine and thus consequently it would amount to "opium derivate" within the meaning of Section 2 of NDPS Act. All 'opium derivatives' fall within the expression "manufactured drug" as defined in Section 2 of the NDPS Act. The material on record, therefore, indicates that the offence proved against the appellant fell clearly within Section 21 of the NDPS Act.
7.	**State of Uttaranchal v. Rajesh Kumar Gupta** **[2007(1)ACR1093(SC)]** **Decided on 10.11.2006**	Appellant had been booked under Section 9 and 22 of NDPS Act; and under the Magic Remedies (Objectionable Advertisement) Act, 1954. High Court grants the bail and now the State is before the Supreme Court. It is contended before the Court that the drugs alleged to have been seized from the Clinic being Schedule H drugs as envisaged in Drugs and Cosmetics Act and have the same having been used for the medical purposes and being not the drugs provided in the rules framed under the NDPS	Appeal was dismissed by the Court. The 1985 Act was enacted with a view to consolidate and amend the law relating to narcotic drug. Section 2(viia) defines "commercial quantity" to mean any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette. "Small quantity" has been defined in Section 2(xxiia) to mean any quantity lesser than the quantity specified by the Central Government ny notification in the Official Gazette. It is not disputed that the medicines seized from the said clinic come within the purview

		Act.	of Schedules G and H of the Drugs and Cosmetics Act. It is furthermore not in dispute that the medicines Epilan c. Phenobarbitore and Cholordiazepoxide are mentioned in Entries 69 and 36 of the 1985 Act respectively, whereas none of them finds place in the Schedule I appended to the 1985 Rules. Hence, provision of section 8 of the 1985 Act not applicable though respondent charged for offences under Section 8 and 22 of the 1985 Act. Said 5 drugs used for medical purposes and Chapter VIIA of NDPS Rules permits use of narcotic drugs and psychotropic substances for medical and scientific purposes.
8.	**State of Rajasthan v. Babu Ram** **[AIR 2007 SC2018]** **Decided on 05.06.2007**	Appellant convicted under Section 17 of the NDPS Act. Sentenced to 10 years rigorous imprisonment and a fine of Rs. 1,00,000/- The question which require consideration is what is the meaning of the words "search any person" occurring in Section 50 (1) of the NDPS Act.	Appeal is allowed to the aforesaid extent. The word "person" has not been defined in the Act. Section 2(xxix) of the Act says that the words and expressions used herein and not defined but defined in the Code of Criminal Procedure have the meanings respectively assigned to them in that Code. The Code, however, does not define the word "person". Section @(y) of the Code says that the words and expressions used therein and not defined but define in the Indian Penal Code 1860 have the meanings respectively assigned to them in that Code. Section 11 of the Indian Penal Code says that the word "person" includes any Company or Association or body of persons whether incorporated or not. A bag briefcase or any such article or container, etc. can under no circumstances, be

			treated as body of human being.
9.	**State of Haryana v. Suresh** **[AIR 2007 SC2245]** **Decided on 05.06.2007**	Appellant convicted under Section 18 of the NDPS Act. Sentenced to 10 years rigorous punishment and a fine of 1,00,000/- The question which require consideration is what is the meaning of the words "search any person" occurring in Section 50 (1) of the NDPS Act.	Appeal is allowed to the aforesaid extent. The word "person" has not been defined in the Act. Section 2(xxix) of the Act says that the words and expressions used herein and not defined but defined in the Code of Criminal Procedure have the meanings respectively assigned to them in that Code. The Code, however, does not define the word "person". Section 2(y) of the Code says that the words and expressions used therein and not defined but define in the Indian Penal Code 1860 have the meanings respectively assigned to them in that Code. Section 11 of the Indian Penal Code says that the word "person" includes any Company or Association or body of persons whether incorporated or not. A bag briefcase or any such article or container, etc. can under no circumstances, be treated as body of human being.
10.	**E. Micheal Raj v. Intelligence Officer, Narcotics Control Bureau** **[AIR2008 SC 1720]** **Decided on 11.03.2008**	The accused – appellant was charged with the offence committed under Section 8(c), 21 and 29 of the NDPS Act. Appellant being a carrier and not being the beneficiary of the drug awarded a minimum sentence of 10 years rigorous imprisonment and a fine of Rs. 1,00,000/- The question before the court is whether the contravention involved in this case is small, intermediate or commercial quantity, and whether the	Appeal stand disposed. In a mixture of a narcotic drug or a psychotropic substance with one or more neutral substances, the quantity of neutral substances is not to be taken into consideration for determining the quantity of the narcotic drug or psychotropic substance. Only the actual content by weight of the narcotic drug is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity defined in Section 2 (xxiia) and (viia) respectively. It is only the actual content by

		total weight of the substance is relevant or percentage of heroin content translated into weight is relevant for ascertaining the quantity recovered from the accused.	weight of the narcotic drug in the mixture which is relevant for the purposes of determining whether it would constitute small quantity or commercial quantity and not on the total weight of the mixture.
11.	**Union of India v. Satrohan** **[2008(56)BLJR2537]** **Decided on 14.07.2008**	The trial Court had convicted the respondent for offences punishable under Section 8(c) and 15 of the NDPS Act to undergo 10 years rigorous punishment and a fine of 1,00,000/-. But the accused was acquitted by the learned Single Judge of the Allahabad Court and now State is challenging the judgment. The question was whether this can be presumed that when there is license of opium, there is license for poppy straw as well.	Appeal Allowed. Section 2(xv) and Section 2(xviii) define "opium" and "poppy straws" respectively. It is being recorded clearly that the expressions "opium" and "poppy straws" are not interchangeable and Section 2(xiv) clearly makes out a distinction between opium and poppy straws. Undisputedly, there are two different entries for opium and poppy straws. Opium appears at Sl. No. 92 while poppy straws appear at Sl. 110.
12.	**Sami Ullaha v. Superintendent, Narcotic Central Bureau** **[AIR2009SC1357]** **Decided on 07.11.2008**	The matter was whether an order of bail granted in favor of the appellant herein could have been directed to be cancelled on the basis of a report of analysis recovered from him containing 'heroin' is the core question involved herein. What distinction is to be made as regards of bail in relation to a commercial quantity and a small quantity?	Appeal is allowed. The contraband found came within the purview of the commercial quantity within the meaning of Section 2(viia) or not is one of the factors which should be taken into consideration by the courts in the matter of grant of refusal to grant bail.
13.	**Shiv Kumar Mishra v. State of goa through Home Secretary** **[AIR2009 SC 1966]**	Appellant convicted under Section 20 (b) (ii) B and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 30,000/- and in	Leave granted by the Court. That the expression `Ganja', as defined in Section 2(i)(b) of the NDPS Act, does not include

	Decided on 23.02.2009	fault of such payment to undergo simple imprisonment for three months. Whether the Ganja also includes seeds and leaves of Ganja plan?	seeds and leaves when not accompanied by the tops. It was also submitted that the expert had not been able to specify the weight of the flowery part alone or the leaves separately.
14.	**State of NCT of Delhi v. Ashif Khan @ Kalu [AIR 2009 SC 1977]** **Decided on 03.03.2009**	Respondent had been convicted under Section 21 (a) and (b) of NDPS Act. The High Court found that quantity was small and hence the matter should be dealt under Section 21 (a) of the Act. The question is on the quantity of drug seized and then on the punishment to be given on the total quantity or the exact quantity of the drug seized.	The provisions of the NDPS Act were amended by the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2001 (Act 9 of 2001) (w.e.f. 2.10.2001), which rationalized the punishment structure under the NDPS Act by providing graded sentences linked to the quantity of narcotic drugs or psychotropic substances carried. Thus, by the amending Act, the sentence structure changed drastically. "Small quantity" and "commercial quantity" were defined under Section 2(xxiiia) and Section 2(viia) respectively. New Section 21 also provides for proportionate sentence for possessing small, intermediate and commercial quantities of offending material. As per Entry 56 of the Notification dated 19.10.2001 issued by the Central Government which deals with heroin, small quantity has been mentioned as 5 gm and commercial quantity has been mentioned as 250 gms
15.	**Jawahar Singh Bhagat Ji**	Upon search of his person, 600 gms. of smack was	The appeal was dismissed by the Court.

	Vs. **State of GNCT of Delhi** **[AIR 2009SC2391]** **Decided o n 05.05.2009**	recovered. Appellant was prosecuted under Section 21 of the Act. He was sentenced to undergo rigorous imprisonment for ten years. Fine of Rs. 1,00,000/- was also imposed upon him. The question is on the punishment given to the appellant as the act of offence was committed prior to the amendment.	The offence indisputably took place on 26.09.1999. Appellant was convicted by a judgment dated 5.11.2000. As indicated hereinbefore, the Amending Act came into force on 2.10.2001. By reason of the said amendment, "commercial quantity" and "small quantity" were defined as under: 2(viia) "commercial quantity", in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette;" 2(xxiiia) "small quantity", in relation to narcotic drugs and psychotropic substances, means any quantity lesser than the quantity specified by the Central Government by notification in the Official Gazette. It is now beyond any doubt or dispute that the quantum of punishment to be inflicted on an accused upon recording a judgment of conviction would be as per the law, which was prevailing at the relevant time. As on the date of commission of the offence and/- or the date of conviction, there was no distinction between a small quantity and a commercial quantity, question of infliction of a lesser sentence by reason of the provisions of the Amending Act, in our

			considered opinion, would not arise. It is also a well-settled principle of law that a substantive provision unless specifically provided for or otherwise intended by the Parliament should be held to have a prospective operation. One of the facets of Rule of Law is also that all statutes should be presumed to have a prospective operation only.
16.	**Union of India (UOI) Vs. Shah Alam and Anr.** **[AIR2010SC1785]** **Decided On: 11.06.2009**	Appellant convicted under Section 8 read with Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 1 lakh each and in default to undergo rigorous imprisonment for a further period of six months The recovery of heroin from the two respondents was made on August 5, 1994. They were convicted and sentenced by the trial court by judgment and order dated May 11, 2000 and were finally released on being acquitted by the High Court by its judgment and order dated November 22, 2002. On inquiry from the court, learned Counsel appearing for the appellant, Union of India, stated that the respondents were not on bail either during trial or	Appeal dismissed. The law as it stands today is vastly different from what it was in 1994 when the occurrence took place. Now, 100 grams of heroin is an intermediate quantity between "small quantity" and "commercial quantity" (vide Section 2 Sub-clause (vii a) and (xxiii a) read with S. O. 1055(E) dated October 19, 2001 at serial No. 56). After the amendment of the Act with effect from October 2, 2001 (vide Act 9 of 2001) the punishment for illegal possession of 100 grams of heroin is provided under Section 21(b) of the Act which reads as under: Punishment for contravention in relation to manufactured drugs and preparations. - Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures,

		after conviction during the pendency of their appeal. This means that the respondents have already served 8 years and 3 months out of the total period of sentence of ten years (plus the default period of six months)	possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable,- (b) where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term **which may extend to** ten years and with fine **which may extend to** one lakh rupees; (c)... The position was quite different in 1994. At that time the possession of narcotic drug in excess of small quantity for personal consumption (5 milligrams, in case of heroin) attracted the punishment of rigorous imprisonment for a minimum period of ten years as well as fine of not less than rupees one lakh. Section 21 of the Act, as it stood in 1994, is as under: 21. Punishment for contravention in relation to manufactured drugs and preparations.- Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug

			or any preparation containing any manufactured drug shall be punishable with rigorous imprisonment for a term which shall **not be less than** ten years but which may extend to twenty years and shall also be liable to fine which shall **not be less than** one lakh rupees but which may extend to two lakh rupees: Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees. It is, thus, to be seen that the sentence of rigorous imprisonment for ten years and fine of rupees one lakh that was the **minimum punishment** for illegal possession of 100 grams of heroin has now become **the maximum permissible punishment** as the law stands today. Having regard to the way the Act has been amended by the Legislature and the graded form it has come to assume both in regard to the quantities of narcotics and the punishments it would not have been wrong for this Court to decline to interfere in this matter on the ground that the respondents have already served $4/5^{th}$ of the (now) maximum permissible punishment for the offence. Nevertheless, we have examined the case on its merits and we are satisfied

			that the judgment of the High Court does not suffer from any infirmity and it does not call for any interference.
17.	**D. Ramakrishnan Vs. Intelligence Officer Narcotic Control Bureau** **[AIR2009SC2404]** **Decided on: 25.07.2009**	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. The matter before the Court was whether all drugs being Schedule 'G' and 'H' drugs under the Drugs and Cosmetics Rules, 1945, export thereof would not attract the provisions of Rule 58 of the Narcotic Drugs and Psychotropic Substances Rules, 1985 (for short, "the Rules") framed by the Central Government in exercise of the powers conferred upon it by Section 9 read with Section 76 of the Act. Mr. Tulsi furthermore contended that use of the drugs for medicinal purposes is acknowledged in terms of the proviso appended to Section 8(c) of the Act. In any event, he would content, Rules 53 and 64 of the Rules being genus, Rule 58 would be subject to Rule 53.	Leave Granted by the Court. Section 2(xxiii) of the Act defines "psychotropic substance" to mean, any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances specified in the Schedule. The drugs mentioned in the First Information Report ("FIR") find place at Serial Nos. 30, 56 and 64 of the Schedule appended to the Act. Chapter III of the Act provides for prohibition of certain operations. Clause (c) thereof mandates that no person shall produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-state, export inter-state, import into India, export from India or transship any narcotic drug or psychotropic substance, except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of license, permit or authorization also in accordance with the terms and conditions of such license, permit or authorization.
18.	**Dharampal Singh Vs. State of Punjab**	The appellants convicted under Section 18 of the Narcotic Drugs and	Appeal dismissed by the Court. Possession is the core ingredient

	[2011(1)ALD(Cri)486] **Decided On: 09.09.2010**	Psychotropic Substances Act, 1985 (hereinafter referred to as the 'Act') and sentenced them to undergo rigorous imprisonment for a period of 10 years each and to pay a fine of Rs. 1 lac each and in default to undergo further rigorous imprisonment for a period of one year each. Whether the possession enough of the poppy straw enough to presume the person have ownership on the same.	to be established before the accused in the instant case are subjected to the punishment under Section 15. If the accused are found to be in possession of poppy straw which is a narcotic drug within the meaning of Clause (xiv) of Section 2, it is for them to account for such possession satisfactorily; if not, the presumption under Section 54 comes into play. We need not go into the aspect whether the possession must be conscious possession.
19.	**Harjit Singh Vs. State of Punjab** **[2011(2)ALD(Cri)76]** **Decided On: 30.03.2011**	Appellant stood convicted for the offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called as NDPS Act) and was sentenced to undergo RI for 10 years and to pay a fine of Rs. 1,00,000/- in default whereof, to undergo further RI for 6 months. Whether the chemical analysis of the contraband "opium" is essential to prove a case against the accused under the NDPS Act.	Leave granted by the Court. The NDPS Act defines `opium' under Section 2(xv) as under: (a) the coagulated juice of the opium poppy; and(b) any mixture, with or without any neutral material, of the coagulated juice of the opium poppy,but does not include any preparation containing not more than 0.2 per cent of morphine. Coagulated means solidified, clotted, curdled - something which has commenced in curdled/solid form. In case the offending material falls in Clause (a) then the proviso to Section 2(xv) would not apply. The proviso would apply only in case the contraband recovered is in the form of a mixture which falls in Clause (b) thereof. 19. Relevant part of the chemical analysis made by the Forensic Science

			Laboratory, Punjab, Chandigarh in the instant case, reads as under: x x x x On analysis of the substance kept in the bundle under reference, it is established that the substance is opium and percentage of morphine is 0.8%. (Emphasis added) The amendment in 2001 was made in order to rationalise the sentence structure so as to ensure that while drug traffickers who traffic in huge quantities of drugs are punished with deterrent sentences; on the other hand, the addicts and those who commit less serious offences are sentenced to lesser punishment.
20.	**Nikku Khan & Mohammadeen** **Vs.** **State of Haryana** **[AIR2011SC3113]** **Decided** **On: 21.07.2011**	Both the appellants are the offence punishable under Section 21 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (hereinafter referred to as the "Act") and sentenced to undergo rigorous imprisonment for twelve years and to pay a fine of Rs. one lakh, in default of payment of fine to further undergo rigorous imprisonment for two years, is before us in this appeal. The Appellant states that the percentage of the	The sentence of the accused from rigorous imprisonment for twelve years to ten years. The sentence of fine and default shall remain unaltered The Notification specifying small quantity and commercial quantity under Section 2 of the Act wherein at serial No. 56, the commercial quantity of heroin is prescribed as 250 grams. Therefore, it is clear that the quantity of heroin which was recovered from the Appellant was less than the commercial quantity as prescribed under the Act.

		concentration was 16.93%. therefore, it points out that the quantity of heroin recovered from the accused virtually comes to 125 grams. So whether the appellants should be punished under small quantity or commercial quantity?	
21.	**Kashmiri Lal Vs. Respondent: State of Haryana** **[2013(2)ALD(Cri)404] Decided On: 16.05.2013**	Appellant guilty of the offence punishable Under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity 'the Act,), had sentenced him to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs. 1,00,000/- and, in default of payment of fine, to suffer further rigorous imprisonment for a period of one year. Whether the person be convicted under commercial and non-commercial quantity if found in possession of two different quantity of drugs.	Appeal Dismissed by the court. As a consequence of the Amending Act, the sentence structure underwent a drastic change. The Amending Act for the first time introduced the concept of 'commercial quantity' in relation to narcotic drugs or psychotropic substances by adding Clause (viia) in Section 2, which defines this term as any quantity greater than a quantity specified by the Central Government by notification in the Official Gazette. Further, the term 'small quantity' is defined in Section 2, Clause (xxiiia), as any quantity lesser than the quantity specified by the Central Government by notification in the Official Gazette. Under the rationalized sentence structure, the punishment would vary depending upon whether the quantity of offending material is 'small quantity', 'commercial quantity' or something in-between. After so stating, the two learned Judges proceeded to state that the intention of the

			legislature for introduction of the amendment to punish the people who commit less serious offence with less severe punishment and those who commit great crimes, to impose more severe punishment. Be it noted, in the said case, the narcotic drug which was found in possession of the Appellant as per the Analyst's report was 60 gms., which was more than 5 gms., i.e., small quantity, but less than 250 gms., i.e., commercial quantity.
22.	**Ajaib Singh Vs. State of Punjab WITH Sapinder Singh Vs. State of Punjab** **[AIR2000SC3374]** **Decided On: 11.04.2000**	Appellants in both appeals were convicted separately by two separate trial Courts under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the 'NDPS Act'). Each of them was sentenced to undergo rigorous imprisonment for ten years and a fine of Rupees one lakh. In default of payment of fine Appellant Ajaib Singh was to undergo rigorous Imprisonment for a period of three years and Appellant Sapinder Singh was to undergo rigorous Imprisonment for a period of one year. They filed separate appeals and the High Court of Punjab and Haryana dismissed their appeals by separate judgments and those	Leave granted by the Court. Section 2(xv) "opium" means; (a) the coagulated juice of the opium poppy; and (b) any mixture, with or without any neutral material, of the coagulated juice of the opium poppy. (c) but does not include any preparation containing not more than 0.2 per cent of morphine. Section 2(xvii) "opium poppy" means- (a) the plant of the species Pap aver somniferum L.; and (b) the plant of any other species of Pap aver from which opium or any phenanthrene alkaloid can be extracted and which the Central Government may, by

		judgments are now Impugned before us. Appellant Ajalb Singh was found to be In possession of 10 kilograms of Poppy husks on 4-6-1996. Appellant Sapinder Singh was found to be In possession of 10 bags each containing 34 kilograms of poppy husks on 23-12-1993. The common question involved in both the appeals is whether poppy husks would fall within the expression "poppy straw.	notification in the Official Gazette, declare to be opium poppy for the purposes of this Act; Section 2(xviil) 'poppy straw' means all parts (except the seeds) of the opium poppy after harvesting whether In their original or cut, crushed or powered and whether or not juice has been extracted there from. Poppy seeds (khas-khas) are innocuous and white in colour, used as a constituent in some foods or are sprinkled over some Indian sweets. It is regarded as a demulcent and a nutritive. The seeds yield a bland oil known as poppy seed oil (khas khas ka tel), which is largely used for culinary and lighting purposes. Even though the term "poppy husk" has not been defined in Narcotic Drugs & Psychotropic Substances Act, the term "poppy straw" has been defined. The term "poppy straw" includes all parts (except the seeds) of the "opium poppy". "Opium poppy" means the plant of the species Pap aver. Thus except for the seed all other parts of the plant of the species Pap aver would fall in the term "poppy straw".
23.	**State of Himachal**	The leaned Sessions Judge,	Appeal allowed by the Court.

	Pradesh **Vs.** **Pawan Kumar** **WITH** **State of Rajasthan Vs.** **Bhanwar Lal** **[AIR2005SC2265]** **Decided on: 08.04.2005**	Mandi, by the judgment and order dated 26.11.1994 convicted the respondent (accused) under Section 18 of the NDPS Act and sentenced him to undergo rigorous imprisonment for 10 years and to pay a fine of Rs. 1 lakh. The respondent preferred an appeal against his conviction and sentence before the High Court of Himachal Pradesh. The High Court held that the opinion given by the Chemical Examiner regarding the substance recovered from the bag of the accused could not be treated to be opinion of the Chemical Examiner as defined under the Act and the Rules and, therefore, the same had to be excluded from consideration. It was further held that the provisions of Section 50 of NDPS Act had not been complied with while conducting the search of the bag and, therefore, recovery of opium from the possession of the accused was not established. On these findings, the appeal was allowed by the judgment and order dated 26.8.1996 and the conviction of the respondent was set aside.	The word "person" has not been defined in the Act. Section 2(xxix) of the Act says that the words and expressions used herein and not defined but defined in the Code of Criminal Procedure have the meanings respectively assigned to them in that Code. The Code of Criminal Procedure, however, does not define the word "person". Section 2(y) of the Code says that the words and expressions used therein and not defined but defined in the Indian Penal Code have the meanings respectively assigned to them in that Code. Section 11 of the Indian Penal Code says that the word "person" includes any Company or Association or body of persons whether incorporated or not. Similar definition of the word "person" has been given in Section 3(42) of the General Clauses Act. Therefore, these definitions render no assistance for resolving the controversy in hand. The word has to be understood in a broad commonsense manner and, therefore, not a naked or nude body of a human being but the manner in which a normal human being will move about in a civilized society. Therefore, the most appropriate meaning of the word "person" appears to be -

		The question, which requires consideration, is what is the meaning of the words "search any person" occurring in Sub-section (1) of Section 50 of the Act.	"the body of a human being as presented to public view usually with its appropriate coverings and clothings". In a civilized society appropriate coverings and clothings are considered absolutely essential and no sane human being comes in the gaze of others without appropriate coverings and clothings. The appropriate coverings will include footwear also as normally it is considered an essential article to be worn while moving outside one's home. Such appropriate coverings or clothings or footwear, after being worn, move along with the human body without any appreciable or extra effort. Once worn, they would not normally get detached from the body of the human being unless some specific effort in that direction is made. For interpreting the provision, rare cases of some religious monks and sages, who, according to the tenets of their religious belief do not cover their body with clothings, are not to be taken notice of. Therefore, the word "person" would mean a human being with appropriate coverings and clothings and also footwear. 10. A bag, briefcase or any such article or container, etc. can, under no circumstances, be treated as body of a human

			being. They are given a separate name and are identifiable as such. They cannot even remotely be treated to be part of the body of a human being. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, *a thaila, a jhola, a gathri*, a holdall, a carton, etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or hung on the shoulder or back or placed on the head. In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the ambit of the word "person" occurring in Section50 of the Act.
24.	**State of Rajasthan Vs. Ratan Lal** **[2009]8SCR227** **Decided On: 31.03.2009**	The accused faced trial for alleged commission of offences punishable under Sections 8 and 18 of Narcotic Drugs and Psychotropic Substances Act, 1985 (in short `NDPS Act') for being in illegal possession of a large quantity of opium. The trial Court directed acquittal only on the ground that	Leave granted by the Court. We are not concerned here with the wide definition of the word "person", which in the legal world includes corporations, associations or body of individuals as factually in these type of cases search of their premises can be done and not of their

		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. What includes the term 'person' under the act for the purpose of search or investigation?	person. Having regard to the scheme of the Act and the context in which it has been used in the Section it naturally means a human being or a living individual unit and not an artificial person. The word has to be understood in a broad commonsense manner and, therefore, not a naked or nude body of a human being but the manner in which a normal human being will move about in a civilized society. Therefore, the most appropriate meaning of the word "person" appears to be - "the body of a human being as presented to public view usually with its appropriate coverings and clothings". In a civilized society appropriate coverings and clothings are considered absolutely essential and no sane human being comes in the gaze of others without appropriate coverings and clothings. The appropriate coverings will include footwear also as normally it is considered an essential article to be worn while moving outside one's home. Such appropriate coverings or clothings or footwear, after being worn, move along with the human body without any appreciable or extra effort. Once worn, they would not normally get detached from the body of the human being unless some

			specific effort in that direction is made. For interpreting the provision, rare cases of some religious monks and sages, who, according to the tenets of their religious belief do not cover their body with clothings, are not to be taken notice of. Therefore, the word "person" would mean a human being with appropriate coverings and clothing's and also footwear. A bag, briefcase or any such article or container, etc. can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such. They cannot even remotely be treated to be part of the body of a human being. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, a thaila, a jhola, a gathri, a holdall, a carton, etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or hung on the shoulder or back or placed on the head. In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was

			carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the ambit of the word "person" occurring in Section 50 of the Act.

3. Brief Report on the POCSO Act 2012.

The POCSO Act 2012 was passed by the Parliament of India on November 22, 2012 and it came into effect on November 14, 2012. However, the current situation is that the provisions of this law still remain as unimplemented, unknown to most and beyond knowledge/information of those who need to apply it. The overall outcome of the POCSO is that it does not complied as much as it was expected in the last two years despite being on the statute book.

Though there are many elaborated provisions enacted in the Act to enhance the enumerated instructions for the protections of the victim's identity, the Act additionally defined the minute details of how the statement of the child who is victimized should be extracted without causing and further suffering to a previously perplexed child. In spite of these guiding provisions for handling the sensitive matters there are still various bottlenecks exist in the fruitful execution of the Act.

POCSO can only be become effective if the police complaint is lodged reported a child sex abuse instance. The police play a paramount role but many a times they are very reluctant due to lack of interest when the victim belong to poor section or they are incompetent in handling the fragility in these offenses due to lack of proper training. The ex – Chief Justice of India also recommended that[1], "the police had a crucial role to play in combating child sexual abuse as they were the first point of contract for anyone initiating a criminal case".

The victim's statements are recorded before the magistrate under Section 164 of the Criminal Procedure Code in 2 – 3 days. This duration is a very crucial gap in which the child victim or his/her family or both can be influenced or hostile by threat to withdraw the complaint. The recording of statement under section 164 should be immediately done in the POCSO cases. Under the POCSO Act, if any incident of assault and harassment against children happened than it shall be reported to either the local police or special juvenile police unit, there is no such provision of reporting the incident to the child welfare committee which is also a government body working immensely for the welfare of the unprivileged children.

[1]CHIEF JUSTICE OF INDIA JUSTICE P. SATHASIVAM, 'Southern Regional Conference on POCSO', The Hindu, November 18, 2013, available at: http://www.thehindu.com/news/nationals/tamil-naidu/cji-calls-for-priodic-review-of-pocso-act/article5360434.ece (Last visited: July 10, 2015; 10:25 PM)

The Act makes it mandatory for any person to inform the designated authorities if that person has any apprehension that any offence is going to be committed against the children[2]. But such a provision would be too farfetched and difficult and difficult to assess[3].

The another major issue of the POCSO Act 2012 was very well observed by the Additional Sessions Judge Pawan Kumar Jain that, 'there is a fault with the pattern of punishment laid down in the POCSO Act 2012 that it prescribed the same sentence for varying degrees of assault'[4]. In this case[5], an FIR was registered in March 2013 after the girl complained to her mother that a man, who she called uncle, had taken her behind a Gurudwara and sexually assaults her. In the police complaint, it was alleged that the man had disrobed the child, touched her genital besides biting her cheek. In the court, the complaint was narrowed down to bite marks on the cheek. After the man was convicted, his lawyer argued for a lesser sentence saying that the possibility that the convict had kissed the victim due to love and affection cannot be ruled out. Court has no option except to award minimum sentence of imprisonment of five years, age of the convict and the fact that he is first-time offender are mitigating factors in favor of the convict, but in view of provisions of Section 10 of the POCSO Act, the Court is unable to give due weight age to the said mitigating factors.

[2] The Protection of Children from Sexual Offences Act, 2012: Section 19 (1) says that: 'Notwithstanding anything contained in the Code of Criminal Procedure 1973, any person (including the child) who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to – (a) the Special Juvenile Police unit; (b) the local Police'.
[3] The Protection of Children from Sexual Offences Act, 2012: Section 20 (1) says that 'Any person, who fails to report the commission of an offence under Section19 (1) or Section 20 or who fails to record such offence under Section 19 (2) shall be punishable with imprisonment of either description which may extend to six month or with fine or with both'.
[4] D K RITURAJ, 'Same sentence for different degrees of assault under POCSO not just: Judge', The Indian Express, November 08, 2013, available at: http://indianexpress.com/article/cities/delhi/same-sentence-for-different-degrees-of-assault-under-pocso-not-just-judge/ (Last visited: July 10, 2015; 10:29 PM)
[5] State v. Tola Ram SC No. 93/13

4. Memorandum of the Mock Trial.

IN THE COURT O SPECIAL JUDGE AT CACHAR, SICLCHAR

State of Assam v. R.

[NDPS CASE NO.: 3 OF 2013
UNDER SECTION(s): 20(b)(ii)(B)]

SUBMISSION ON THE BEAHALF OF THE STAE

WORKSHOP ON LEGAL FRAMEWORK TO DEAL WITH DRUG ADDICTION AND DRUG TRAFFICKING

SESSION 8: July 25, 2015; 02:00 PM – 03:00 PM

MOCK TRIAL ON NARCOTICS DRUGS AND PSCHOTROPIC SUBSTANCES ACT – 1985 AT THE NATIONAL JUDICIAL ACADEMY BHOPAL

FACTS OF THE CASE

- On 05.01.2014 at about 12.05 p.m, the accused R was apprehended by the Officer-in-Charge, Lakimpur Police Station Inspector B on suspicion and found in possession of gunny bag with 6 k.gs. of ganja in it.
- B seized the ganja, drew sample from the same, drew up sketch map and also examined some witness and thereafter arrested R and F.I.R. was lodged.
- On completion of investigation, charge – sheet was submitted against R.
- Your Court has framed charges under Section 20(b)(ii) of the NDPS Act against R, which were read over and explained to R who denied the said charges and claimed to be tried.
- The prosecution examined 5 (give) witnesses and the time of which, R was examined under Section 315 Cr.P.C. wherein he denied his involvement and declined to adduce evidence.

POINTS OF DETERMINATION / ISSUES

- Whether the accused person was found in possession of the contraband ganja?
- If so, what is the quantity of ganja found in possession of the accused person?

WITNESSES STATEMENTS FROM THE PROSECTION SIDE

- PW – 1, who is the VDP Secretary of Fulertol Bazaar, stated that the occurrence took place on January 05, 014. On that day he received information that ganja was recovered from the possession of a person, hearing which he went to the place of occurrence. He further stated that the police in his presence weighed the ganja which was found to be 6 k.g.s and than seized the same. Police took sample from the seized ganja in his possession and that the accused person in his presence states that he was taking the ganja to Moninagar.
- PW – 2 stated that he saw the police apprehended one person along with a gunny bag and thereafter he could learn that there was ganja inside the gunny bag.
- PW – 3 stated that on the day of occurrence at about 11 a.m., he went to Fulertol on seeing a gathering and he saw that police recovered ganja in a gunny bag and seized the same. He signed the Ext. 1 seizure list, wherein Ext. 1(3) is his signature. He

heard that there was 6 k.gs. of ganja but he does not know the name of the person from whom the ganja was recovered as the police had already taken away the person to the police station from whom ganja was recovered.

- PW – 4 stated that he was the Officer in Charge of Lakhimpur Police Stattion on the day of occurrence. On January 05, 2015 he went out from Lakhimpur Police Station towards Fulertol to investigate another case and when he reached at Fulertol Tinali, he found ganja in the said bag. He further stated that he immediately informed the matter to DSP Head Quarter over mobile phone who directed him to seize the ganja. On being asked, the person told his name as Rupam Ghosh. He found 6 k.gs. of ganja in the gunny bag and seized the same and also obtained sample from the same. He further stated that he drew sketch map of the place of occurrence, examined some witnesses, brought the accused to Lakhimpur Police Station and lodged the F.I.R. Ext. 3.
- PW – 5 is the officer who submitted the charge – sheet. He stated in his evidence that on January 05, 2013 he was posted as Sub – Inspector of Lakhimpur Police Station. On that day Officer in Charge Lakhimpur Police Station Biswajit Purkayastha submitted Ext. 3 F.I.R. along with extract copy of G.D. Entry No. 101 dated January 05, 2013 and endorsed the same in his name for investigation. He further stated that on going through the C.D., he found that the investigation of the case is almost completed. He forwarded the accused person to judicial custody. He examined the informant and sent the sample of seized ganja through Dy. S. P. head quarter, Silchar to F.S.L. for chemical examination by messenger constable Ashok Kumar Singh and on receipt of the F.S.L. report, he submitted charge sheet.

RELEVANT SECTIONS

SECTION 42: of the NDPS Act lays down that any officer of any of the department mentioned in section 42 may seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or other article which may furnish evidence of holding any illegal acquired property which is liable for seizure or freezing or forfeiture under Chapter V A of this Act; detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.

Case – Directorate of Revenue v. Md. Ninar Holia (2008) 2 SCC 370, the Hon'ble Apex Court held:

"*Section 43, on plain reading of the Act, may not attract the rigours of Section 42 thereof. That means that even subjective satisfaction on the part of the authority, as is required under Sub-section (1) of Section 42, need not be complied with, only because the place where at search is to be made is a public place. If Section 43 is to be treated as an exception to Section 42, it is required to be strictly complied with. An interpretation which strikes a balance between the enforcement of law and protection of the valuable human right of an accused must be resorted to. A declaration to the effect that the minimum requirement, namely, compliance of Section 165 of the Code of Criminal Procedure would serve the purpose may not suffice as non-compliance of the said provision would not render the search a nullity. A distinction therefore must be borne in mind that a search conducted on the basis of prior information and a case where the authority comes across a case of commission of an offence under the Act accidentally or per chance…*"

Case – Hamidbhai Azambhai Malik v. State of Gujarat (AIR) 2009 SC 1378, it was held by the Hon'ble Apex Court that –

"*Therefore, it is settled proposition of law when such an information or intimation or knowledge comes to the notice of the Investigation of some other offence, it is not necessary to follow in all cases the conditions incorporated in Section 42*".

Section 50: Conditions under which search of person shall be conducted:-

1. When any officer duly authorized under Section42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if person so requires, take such person without necessary delay to the nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.
2. If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to it sub-section (1)
3. The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.
4. No female shall be searched by anyone expecting a female.
5. When an officer duly authorized under Section 42 has reason to believe that it is not possible to take the person to be searched to the nearest 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 nay narcotic drug or psychotropic substance, or controlled substance or article or document, he may instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to

search the person as provided under Section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

6. After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy two hours send a copy thereof to his immediate official superior.

Case – State of Punjab v. Balbir Singh [1994 CriLJ 3702]; the Hon'ble Apex Court arrived at the following conclusions:

- If a police officer without any prior information as contemplated under the provisions of the NDPS Act makes a search or arrest a person in the normal course of investigation into an offence or suspected offence or suspected offences as provided under the provisions of CRPC and when such search is completed at the stage Section 50 of the NDPS Act would not be attracted and the question of complying with the requirements there under would not arise. If during such search or arrest there is a chance recovery of narcotic drug or psychotropic substance then the police officer, who is not empowered, should inform the empowered officer who should thereafter proceed in accordance with the provisions of the NDPS Act.
- Only empowered officers or duly authorized officers as enumerated in Section 41 (2) and 42 (1) can act under the provisions of the NDPS Act by anyone other than such officers, the same would be illegal.

Section 20: Punishment for contravention in relation to cannabis plant and cannabis: -

Whoever, in contravention of any provisions of this Act or any rule or order made or condition of license granted there under,-

(a) Cultivates any cannabis plant; or

(b) Produces, manufactures, possesses, sells, purchases, transport, imports inter – state, exports inter – state or uses cannabis shall be punishable –

[(i) Where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees; and

(ii) Where such contravention relates to sub – clause (b),-

A. And involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine, which may extend to ten thousand rupees, or both;

B. And involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;

C. And involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees.

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees].

ARGUMENTS

It was observed by the Hon'ble Apex Court in State of Punjab v. Balbir Singh that only empowered officers or duly authorized officers as enumerated in Section 41 (2) and 42 (1) can act under the provisions of the NDPS Act by anyone other than such officers, the same would be illegal. So it may be noted under the Section 50 of the NDPS Act that the Officer in Charge of a police station is an authorized officer in the State of Assam and therefore the Officer in Charge, Lakhimpur Police Station i.e. PW – 3 was authorized to make search and seizure.

The Prosecutor Witness – 5 have sent the sample of ganja through D.S.P. Head Quarter, Silchar to F.S.L. for chemical examination by messenger constable Ashok Kumar Singha on January 07 2013, the seizure having been made on January 0513, January 06 2013 being a Sunday, there was no delay in sending the samples to F.S.L., Kahilipara, Guwahati from Lakhimpur Police Station. The PW -5 also exhibited the report of the F.S.L. as Ext. 6. The Defense did not challenge the aforesaid fact deposed to by the PW – 5. The defense has not disputed the genuineness of the Ext. 6 F.S.L. report, the same stands duly proved and must be read as a piece of substantive evidence. It is an established from the F.S.L. report that the contraband recovered from the accused is cannabis (ganja).

6 k.gs. ganja was recovered from the possession of the accused, which is a commercial quantity. The PW – 1 stated in his evidence that the police in his presence weighed and seized the ganja. PW – 3 whose signed the Ext. 2 of seizure list also stated in his evidence that ganja seized from the accused bag was 6 k.gs.

5. **Reading Material Compiled under the supervision of Justice B. S. Chuahan (Judge, Supreme Court of India)**

NATIONAL CONFERENCE OF FUNCTIONS OF REGISTRAR (ADMISNITRATION)

29 – 31 July 2015
At
The National Judicial Academy Bhopal

By

Justice B. S. Chauhan
(Judge, Supreme Court of India)

Compiled under the Supervision of the Honorable Justice
By Nishant Sirohi
(Intern – National Judicial Academy)

- **Rajasthan State Industrial Development and Investment Corporation v. Subhash Sindhi Cooperative Housing Society, Jaipur and Others**.
  [2013 (10) SCC 427]

Executive instructions which have no statutory force, cannot override the law. Therefore, any notice, circular, guidelines etc. which run contrary to statutory laws cannot be enforced.

(Vide: B.N. Nagarajan and Ors., etc. v. State of Mysore and Ors. etc.: AIR 1966 SC 1942; Sant Ram Sharma v. State of Rajasthan and Ors.: AIR 1967 SC 1910; Secretary, State of Karnataka and Ors. v. Umadevi and Ors. : AIR 2006 SC 1806; and Mahadeo Bhau Khilare (Mane) and Ors. v. State of Maharashtra and Ors: (2007) 5 SCC 524).

There can be no quarrel with respect to the settled legal proposition that a purchaser, subsequent to the issuance of a Section 4 Notification in respect of the land, cannot challenge the acquisition proceedings, and can only claim compensation as the sale transaction in such a situation is Void qua the Government. Any such encumbrance created by the owner, or any transfer of the land in question, that is made after the issuance of such a notification, would be deemed to be void and would not be binding on the Government.

(Vide: Gian Chand v. Gopala and Ors. : (1995) 2 SCC 528; Yadu Nandan Garg v. State of Rajasthan and Ors.: AIR 1996 SC 520; Jaipur Development Authority v. Mahavir Housing Coop. Society, Jaipur and Ors. : (1996) 11 SCC 229; Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain and Ors: (1997) 1 SCC 35; Meera Sahni v. Lieutenant Governor of Delhi and Ors.: (2008) 9 SCC 177; Har Narain (Dead) by L.Rs. v. Mam Chand (Dead) by L.Rs. and Ors. : (2010) 13 SCC 128; and V. Chandrasekaran and Anr. v. The Administrative Officer and Ors.: JT 2012 (9) SC 260)

It must be made to an officer having the requisite authority to perform the act demanded. Furthermore, the authority against whom mandamus is issued, should have rejected the demand earlier. Therefore, a demand and its subsequent refusal, either by words, or by conduct are necessary to satisfy the court that the opposite party is determined to ignore the demand of the applicant with respect to the enforcement of his legal right. However, a demand may not be necessary when the same is manifest from the facts of the case, that is, when it is an empty formality, or when it is obvious that the opposite party would not consider the demand.

(Vide: Commissioner of Police, Bombay v. Govardhandas Bhanji: AIR 1952 SC 16; Praga Tools Corporation v. Shri C.V. Imanual and Ors. : AIR 1969 SC 1306; Punjab Financial Corporation v. Garg Steel: (2010) 15 SCC 546;Union of India and Ors. v. Arulmozhi Iniarasu

and Ors.: AIR 2011 SC 2731; and Khela Banerjee and Anr. v. City Montessori School and Ors. : (2012) 7 SCC 261).

General Officer Commanding v. CBI and Anr. : AIR 2012 SC 1890, explained the phrase "good faith":

> ... Good faith has been defined in Section 3(22) of the General Clauses Act, 1897, to mean a thing which is, in fact, done honestly, whether it is done negligently or not. Anything done with due care and attention, which is not malafide, is presumed to have been done in good faith. There should not be personal ill-will or malice, no intention to malign and scandalize. Good faith and public good are though the question of fact, it required to be....

In Brijendra Singh v. State of U.P. and Ors.: AIR 1981 SC 636, this Court while dealing with the issue held:

> "In the popular sense, the phrase 'in good faith' simply means; honestly, without fraud, collusion, or deceit; really, actually, without pretence and without intent to assist or act in furtherance of a fraudulent or otherwise unlawful scheme..... It is a cardinal canon of construction that an expression which has no uniform, precisely fixed meaning, takes its colour, light and content from the context"

The right to administer, cannot obviously include the right to maladminister. Thus, we find no words to express anguish as what kind of governance it had been.

(Vide: In Re: The Kerala Education Bill 1957 : AIR 1958 SC 956; All Bihar Christian Schools Association and Anr. v. State of Bihar and Ors. : AIR 1988 SC 305; Sindhi Education Society and Anr. v. The Chief Secretary, Govt. of NCT of Delhi and Ors. : (2010) 8 SCC 49; and State of Gujarat and Anr. v. Hon'ble Mr. Justice R.A. Mehra (Retd.) and Ors. : JT 2013 (1) SC 276).

- **RENU AND OTHERS V. DISTRICT AND SESSIONS JUDGE, TIZ HAZARI COURT, DELHI AND OTHER** [AIR 2014 SC 2175]

Article 229 and 235 cannot over ruled Article 13 (2), 14, 16, 372, 236.

"…it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the employment exchange or putting a note on the notice board, etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it

deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance with the said constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit.

Where any such appointments are made, they can be challenged in the court of law. The quo warranto proceeding affords a judicial remedy by which any person, who holds an independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty, so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by judicial order. In other words, the procedure of quo warranto gives the Judiciary a weapon to control the Executive from making appointment to public office against law and to protect a citizen from being deprived of public office to which he has a right. These proceedings also tend to protect the public from usurpers of public office who might be allowed to continue either with the connivance of the Executive or by reason of its apathy. It will, thus, be seen that before a person can effectively claim a writ of quo warranto, he has to satisfy the Court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to an enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not. For issuance of writ of quo warranto, the Court has to satisfy that the appointment is contrary to the statutory rules and the person holding the post has no right to hold it.

(Vide:The University of Mysore and Anr. v. C.D. Govinda Rao and Anr. : AIR 1965 SC 491; Shri Kumar Padma Prasad v. Union of India and Ors. : AIR 1992 SC 1213; B.R. Kapur v. State of Tamil Nadu and Anr. : AIR 2001 SC 3435; The Mor Modern Co-operative Transport Society Ltd. v. Financial Commissioner and Secretary to Govt., Haryana and Anr. : AIR 2002 SC 2513; Arun Singh v. State of Bihar and Ors. : AIR 2006 SC 1413; Hari Bansh Lal v. Sahodar Prasad Mahto and Ors.: AIR 2010 SC 3515; and Central Electricity Supply Utility of Odisha v. Dhobei Sahoo and Ors. : (2014) 1 SCC 161).

Rule of law is the basic feature of the Constitution. There was a time when REX was LEX. We now seek to say LEX is REX. It is axiomatic that no authority is above law and no man is above law. Article 13(2) of the Constitution provides that no law can be enacted which runs contrary to the fundamental rights guaranteed under Part III of the Constitution. The

object of such a provision is to ensure that instruments emanating from any source of law, permanent or temporary, legislative or judicial or any other source, pay homage to the constitutional provisions relating to fundamental rights. Thus, the main objective of Article 13 is to secure the paramountcy of the Constitution especially with regard to fundamental rights.

The aforesaid provision is in consonance with the legal principle of "Rule of Law" and they remind us of the famous words of the English jurist, Henry de Bracton - "The King is under no man but under God and the Law". No one is above law. The dictum - "Be you ever so high, the law is above you" is applicable to all, irrespective of his status, religion, caste, creed, sex or culture. The Constitution is the supreme law. All the institutions, be it legislature, executive or judiciary, being created under the Constitution, cannot ignore it.

- **DISTRICT JUDGE BAGHPAT AND ANOTHER V. ANURAG KUMAR AND OTHERS** [(2006) ILR 2All676]
  - No appointment over and above number of vacancy advertisement under Articles 235 & 335 of the constitution.
  - Termination of temporary employee.
  - Interim order not amounting to final relief.
  - Section 114 (e) of the Evidence Act that That judicial and official acts have been regularly performed.
  - It is expressly or by necessary implication dispensed with, the authority must record reasons for its decision.

- **MANISH GOEL V. ROHINI GOEL** [AIR 2010 SC 1099]

Laxmidas Morarji (dead) by L.Rs. v. Behrose Darab Madan: (2009) 10 SCC 425, while dealing with the provisions of Article142 of the Constitution, this Court has held as under:

...The power under Article 142 of the Constitution is a constitutional power and hence, not restricted by statutory enactments. Though the Supreme Court would not pass any order

under Article 142 of the Constitution which would amount to supplanting substantive law applicable or ignoring express statutory provisions dealing with the subject, at the same time these constitutional powers cannot in any way, be controlled by any statutory provisions. However, it is to be made clear that this power cannot be used to supplant the law applicable to the case. This means that acting under Article 142, the Supreme Court cannot pass an order or grant relief which is totally inconsistent or goes against the substantive or statutory enactments pertaining to the case. The power is to be used sparingly in cases which cannot be effectively and appropriately tackled by the existing provisions of law or when the existing provisions of law cannot bring about complete justice between the parties. (Emphasis added)

Therefore, the law in this regard can be summarized to the effect that in exercise of the power under Article 142 of the Constitution, this Court generally does not pass an order in contravention of or ignoring the statutory provisions nor the power is exercised merely on sympathy.

- **STATE OF PUNJAB V. DHARAM SINGH [AIR 1968 SC 1210]**

The reason for this conclusion is that where on the completion of the specified period of probation the employee is allowed to continue in the post without an order of confirmation, the only possible view to take in the absence of anything to the contrary in the original order of appointment or promotion or the service rules, is that the initial period of probation has been extended by necessary implication. In all these cases, the conditions of service of the employee permitted extension of the probationary period for an indefinite time and there was no service rule forbidding its extension beyond a certain maximum period.

In the absence of any formal order, the question is whether by necessary implication from the proved facts of these cases, the authority should be presumed to have passed some order under r. 6(3) in respect of the respondents, and if so, what order should be presumed to have been passed.

The initial period of probation of the respondents ended on October 1, 1958. By allowing the respondents to continue in their posts thereafter without any express order of confirmation, the competent authority must be taken to have extended the period of probation up to October 1, 1960 by implication. But under the proviso to r. 6(3), the probationary period could not extend beyond October 1, 1960. In view of the proviso to r. 6(3), it is not possible to presume

that the competent authority extended the probationary period after October 1, 1960, or that thereafter the respondents continued to hold their posts as probationers.

Though the appointing authority did not pass formal orders of confirmation in writing, it should be presumed to have passed orders of confirmation by so allowing them to continue in their posts after October 1, 1960.

- **STATE OF RAJASTHAN V. B. K. MEENA AND OTHERS** [AIR 1997 SC 13]

  We are quite aware of the fact that not all the disciplinary proceedings are based upon true charges; some of them may be unfounded. It may also be that in some cases, charges are leveled with oblique motives. But these possibilities do not detract from the desirability of early conclusion of these proceedings. Indeed, in such cases, it is all the more in the interest of the charged officer that the proceedings are expeditiously concluded. Delay in such cases really works against him.

  Though the respondent was suspended pending enquiry in May, 1990, the order has been revoked in October 1993. The respondent is continuing in office. It is in his interest and in the interest of good administration that the truth or falsity of the charges against him is determined promptly.

  The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the Rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed.

- **Mohd. Yunis Khan v. State of Uttar Pradesh** [2010 (10) SCC 539]

  1. MISCONDUCT – DISOBEDIENCE – MISBEHAVIOUR : Protest/disobedience against an illegal order may not be termed as misconduct in every case. In an

appropriate case, it may be termed as revolting to one's sense of justice. In view of the above, we are of the considered opinion that the protest raised by the appellant against the punishment imposed for his absence could not give rise to a cause of action for initiating the disciplinary proceedings.

2. BIAS – VIOLATION OF NATURAL JUSTICE: Punishment for misconduct can be imposed in consonance with the statutory rules and principles of natural justice.

(See Bachhittar Singh v. State of Punjab and Anr. : AIR 1963 SC 395; Union of India v. H.C. Goel : AIR 1964 SC 364; Anil Kumar v. Presiding Officer and Ors. : AIR 1985 SC 1121; Moni Shankar v. Union of India and Anr. : (2008) 3 SCC 484; and Union of India and Ors. v. Prakash Kumar Tandon: (2009) 2 SCC 541).

The legal maxim "nemo debet esse judex in propria causa" (no man shall be a judge in his own cause) is required to be observed by all judicial and quasi-judicial authorities as non-observance thereof is treated as a violation of the principles of natural justice

(Vide Secretary to Government, Transport Department v. Munuswamy Mudaliar and Anr. : AIR 1988 SC 2232; Meenglas Tea Estate v. The Workmen : AIR 1963 SC 1719; and Mineral Development Ltd. v. The State of Bihar and Anr. : AIR 1960 SC 468).

An order in violation of the principles of natural justice may be void depending on the facts and circumstances of the case.

(Vide Raja Jagdambika Pratap Narain Singh v. Central Board of Direct Taxes and Ors. : AIR 1975 SC 1816; Smt. Maneka Gandhi v. Union of India and Anr. : AIR 1978 SC 597; Krishan Lal v. State of J. and K. : (1994) 4 SCC 422; State Bank of Patiala and Ors. v. S.K. Sharma : AIR 1996 SC 1669; Union of India and Anr. v. Mustafa and Najibai Trading Co. and Ors. : AIR 1998 SC 2526; and Vishnu Dutt and Ors. v. State of Rajasthan and Ors. : (2005) 13 SCC 592).

3. DEPARTMENTAL AUHORITY IS QUASI – CRIMINAL IN NATURE: violation of the principles of natural justice renders the order null and void – the existence of an element of bias renders the entire disciplinary proceedings void. Such a defect cannot be cured at the appellate stage even if the fairness of the appellate authority is beyond dispute.

(Vide: S. Parthasarthy v. State of Andhra Pradesh : AIR 1973 SC 2701; and Tilak Chand Magatram Obhan v. Kamla Prasad Shukla and Ors. : 1995 Supp. (1) SCC 21)

4. WHEN PST CODNUCT IS EXAMINED: The technical rules of procedure contained in the Code of Civil Procedure, 1908 and the provisions of the Indian Evidence Act, 1872 do not apply in a domestic enquiry, however, the principles of natural justice

require to be observed strictly. Therefore, the enquiry is to be conducted fairly and reasonably and the enquiry report must contain reasons for reaching the conclusion that the charge framed against the delinquent stood proved against him. It cannot be an ipse dixit of the inquiry officer. Punishment for misconduct can be imposed in consonance with the statutory rules and principles of natural justice.

(See Bachhittar Singh v. State of Punjab and Anr.: AIR 1963 SC 395; Union of India v. H.C. Goel : AIR 1964 SC 364; Anil Kumar v. Presiding Officer and Ors.: AIR 1985 SC 1121; Moni Shankar v. Union of India and Anr.: (2008) 3 SCC 484; and Union of India and Ors. v. Prakash Kumar Tandon : (2009) 2 SCC 541).

5. IMPOSING CONDITION: A statutory authority is not permitted to act whimsically/arbitrarily. Its actions should be guided by the principles of reasonableness and fairness. The authority cannot be permitted to abuse the law or to use it unfairly – The requirements of morale, discipline and justice have to be reconciled. There is no scarcity of examples in history, and we see it in day-to-day life also, that even in disciplined forces, forced morale and discipline without assured justice breeds defiance and belligerency – Constitution protects not only the life and liberty but also the dignity of every person – The authority cannot be permitted to abuse the law or to use it unfairly.

- **Ravi Yashwant Bhoi v. District Collectorate, Raigard and Others** [(2012) 4 SCC 407]

1. Failure on the part of appellant President of Municipal Council to call general body meeting inadvertently, unintentionally and in ignorance of statutory requirement, without any corresponding loss to Municipal Council, held, would not amount to misconduct - Appellant restored to office, (2012) 4 SCC 407-A.
2. Removal of duly elected President of Municipal Council (appellant) by competent authority (being Chief Minister of the State holding portfolio of Department concerned) unceremoniously in a casual manner without strictly adhering to safeguards provided under statute, held on facts, vitiated by malice in law - Appellant restored to office, (2012) 4 SCC 407-C
3. One of the principles of natural justice - Rationale behind requirement of recording reasons in order - Right to reasons is an indispensable part of sound judicial system, (2012) 4 SCC 407-G

4. S. 114 Ill. (g) - Removal proceedings conducted against elected office-bearer i.e. appellant President of Municipal Council for misconduct - Original record not produced before Supreme Court, though directed - Adverse inference drawn - Chief Secretary of State directed to conduct enquiry into non-compliance and send personal affidavit in respect thereto to Supreme Court within four weeks, (2012) 4 SCC 407-I.

MISCONDUCT AND DISGRACEFUL CONDUCT

The expression 'misconduct' has to be understood as a transgression of some established and definite rule of action, a forbidden act, unlawful behavior, willful in character. It may be synonymous as mis-demeanor in propriety and mismanagement. In a particular case, negligence or carelessness may also be a misconduct for example, when a watchman leaves his duty and goes to watch cinema, though there may be no theft or loss to the institution but leaving the place of duty itself amounts to misconduct. It may be more serious in case of disciplinary forces. Further, the expression 'misconduct' has to be construed and understood in reference to the subject matter and context wherein the term occurs taking into consideration the scope and object of the statute which is being construed. Misconduct is to be measured in the terms of the nature of misconduct and it should be viewed with the consequences of misconduct as to whether it has been detrimental to the public interest. An action which is detrimental to the prestige of the institution may also amount to misconduct. Acting beyond authority may be a misconduct. When the office bearer is expected to act with absolute integrity and honesty in handling the work, any misappropriation, even temporary, of the funds etc. constitutes a serious misconduct, inviting severe punishment. Conclusions about the absence or lack of personal qualities in the incumbent do not amount to misconduct holding the person concerned liable for punishment. Mere error of judgment resulting in doing of negligent act does not amount to misconduct. However, in exceptional circumstances, not working diligently may be a misconduct. An action which is detrimental to the prestige of the institution may also amount to misconduct. Acting beyond authority may be a misconduct. When the office bearer is expected to act with absolute integrity and honesty in handling the work, any misappropriation, even temporary, of the funds etc. constitutes a serious misconduct, inviting severe punishment. (Vide: Disciplinary Authority-cum-Regional Manager and Ors. v. Nikunja Bihari Patnaik: (1996) 9 SCC 69; Government of Tamil Nadu v. K.N. Ramamurthy : AIR 1997 SC 3571; Inspector Prem Chand v. Govt. of NCT of Delhi and Ors. : (2007) 4 SCC 566; and State Bank of India and Ors. v. S.N. Goyal : AIR 2008 SC 2594; Union of India and Ors. v. J. Ahmed : AIR 1979 SC 1022; Disciplinary Authority-cum-Regional Manager and Ors. v. Nikunja Bihari Patnaik : (1996) 9 SCC 69; Government of Tamil Nadu v. K.N. Ramamurthy : AIR 1997 SC 3571; Inspector Prem Chand v. Govt. of NCT of Delhi and Ors. : (2007) 4 SCC 566; and State Bank of India and Ors. v. S.N. Goyal : AIR 2008 SC 2594).

The emphasis on recording reason is that if the decision reveals the 'inscrutable face of the sphinx', it can be its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind of the authority before the court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made. In other words, a speaking out, the inscrutable face of the sphinx is ordinarily incongruous with a judicial or quasi-judicial performance

It must be borne in mind that severer the punishment, greater has to be the care taken to see that all the safeguards provided in a statute are scrupulously followed.

- **VIJAY SINGH V. STATE OF UTTAR PRADESH AND OTHERS** [(2012) *5 SSC 242]*

  "Punishment not prescribe under the Rule cannon be a verdict"

The perusal of major and minor penalties prescribed in the above Rule makes it clear that sanctioning leave without pay is not one of the punishments prescribed, though, and under what circumstances leave has been sanctioned without pay is a different aspect with which we are not concerned for the present. However, Rule 4 makes it clear that sanction of leave without pay is not one of the punishments prescribed. Disciplinary authority is competent to impose appropriate penalty from those provided in Rule 4 of the Rules which deals with the major penalties and minor penalties. Denial of salary on the ground of "no work no pay" cannot be treated as a penalty in view of statutory provisions contained in Rule 4 defining the penalties in clear terms.

The issue involved herein is required to be examined from another angle also. Holding departmental proceedings and recording a finding of guilt against any delinquent and imposing the punishment for the same is a quasi-judicial function and not administrative one. Imposing the punishment for a proved delinquency is regulated and controlled by the statutory rules. Therefore, while performing the quasi-judicial functions, the authority is not permitted to ignore the statutory rules under which punishment is to be imposed. The disciplinary authority is bound to give strict adherence to the said rules. Thus, the order of

punishment being outside the purview of the statutory rules is a nullity and cannot be enforced against the Appellant.

(Vide: Bachhittar Singh v. State of Punjab and Anr. : AIR 1963 SC 395; Union of India v. H.C. Goel : AIR 1964 SC 364; Mohd. Yunus Khan v. State of U.P. and Ors. : (2010) 10 SCC 539; and Chairman-cum-Managing Director, Coal India Ltd. and Ors. v. Ananta Saha and Ors : (2011) 5 SCC 142)

In S. Khushboo v. Kanniammal and Anr.: AIR 2010 SC 3196, this Court has held that a person cannot be tried for an alleged offence unless the Legislature has made it punishable by law and it falls within the offence as defined Under Sections 40, 41 and 42of the Indian Penal Code, 1860, Section 2(n) of Code of Criminal Procedure 1973, or Section 3(38) of the General Clauses Act, 1897. The same analogy can be drawn in the instant case though the matter is not criminal in nature.

- **NIRMILA J. JHALA V. STATE OF GUJARAT AND OTHERS** [AIR 2013 SC 1513]

I. Standard Proof of Inquiry.

In M.V. Bijlani v. Union of India and Ors.: AIR 2006 SC 3475, the Court held:

... Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures.

II. Evidence recorded in preliminary when can be used.

In Naryan Dattatraya Ramteerathakhar v. State of Maharashtra and Ors.: AIR 1997 SC 2148, this Court dealt with the issue and held as under:

...a preliminary inquiry has nothing to do with the enquiry conducted after issue of charge-sheet. The preliminary enquiry is only to find out whether disciplinary enquiry

should be initiated against the delinquent. Once regular enquiry is held under the Rules, the preliminary enquiry loses its importance and, whether preliminary enquiry was held strictly in accordance with law or by observing principles of natural justice of nor, remains of no consequence.

It is evident that the evidence recorded in preliminary inquiry cannot be used in regular inquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice.

In Ayaaubkhan Noorkhan Pathan v. State of Maharashtra and Ors : AIR 2013 SC 58, this Court while placing reliance upon a large number of earlier judgments held that cross-examination is an integral part of the principles of natural justice, and a statement recorded behind back of a person wherein the delinquent had no opportunity to cross-examine such persons, the same cannot be relied upon.

The preliminary enquiry may be useful only to take a prima facie view, as to whether there can be some substance in the allegation made against an employee which may warrant a regular enquiry.

- **KHANAPURAM GANDAIAH V. ADMISNTRATIVE OFFICE & OTHERS** [AIR 2009 Andh Pra 174]

  Information as to why and what reason Judge has to come to particular decision or conclusion – cannot be sought by litigant – judge should be free to take independent decision.