

SEARCH, SEIZURE AND ARREST



**Suresh Kumar Singh
Superintendent NCB Siliguri**

Article 21 of the constitution

Right to Life: This includes the fundamental right to live with dignity.

Right to Personal Liberty: This protects an individual's freedom to act within the bounds of the law.

Protection Against Arbitrary State Action: The article ensures that the state cannot take away a person's life or liberty without a lawful and reasonable procedure.

Right to Health: Courts have recognized the right to health as part of the right to life.

Right to a Healthy Environment: This is crucial for a dignified human existence.

Right to Livelihood: The ability to sustain oneself is considered an essential part of the right to life.

LEGAL PROVISIONS

Legal Provisions

- Section – 41.
Power to issue warrant and authorization.
- Search/Arrest Warrant can be issued by a Metropolitan Magistrate, Magistrate of first class, Magistrate of second class specially empowered by the State Government for arrest and seizure.
- Search/Arrest Authorization can be issued by Gazetted officers of the department of Central Excise, NCB, Customs, DRI including paramilitary forces/armed forces as is empowered by the Central Govt/State Govt..

Legal Provision

- Officer of revenue, drug control, excise, police or any other department of State Government empowered by the State Governments.
- The authorization can be made to any officer subordinate to him but superior in rank to a peon, sepoy, constable for arrest and seizure.

Power to entry, search, seizure and arrest without warrant or Authorization

Section 42(1): Any officer (superior in rank to peon, sepoy or constable) of the departments of Central Excise, NCB, Customs, DRI or any other department of the Central Govt including Paramilitary/Armed forces and any such officer of revenue, drug control, excise, police or any other departments of State Govts. specially empowered can search any building, conveyance or enclosed place and Seize any contraband items or incriminating documents and arrest the person if necessary.

It should be between sunrise and sunset.

Section 42(2): Where an officer takes down any information in writing under sub-section(1) or records grounds for his belief under the proviso thereto, he shall within seventy two hours send a copy thereof to his immediate official superior.

Proviso

If such officer has reason to believe that a search warrant or authorization cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of the offenders, he may enter or search any building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

Section – 43

- (a):- Power to seize of any contraband drug and any animal, conveyance, article and document in connection with the contraband in public place.
- (b):- Power to detain and search any person in connection with contraband drug and arrest him in public place.
- Public place includes any public conveyance, hotel, shop, or other place intended to use by or accessible to, the public.

Search as per section 103 BNSS

1. Allowing of the officer intending search free ingress and other facilities on production of Warrant.
2. If such ingress is not possible the officer intending search may proceed as per sec. 44 (2) BNSS, which allows officer to break open and enter forcefully without Warrant.
3. Personal search of the person. Women must be searched by another woman.
4. Search should be conducted in presence of two independent witnesses of the locality.
5. Preparation of inventory of items seized by the Seizing officer to be signed by the witnesses.

Search as per section 103 BNSS

6. The occupant of the house shall be permitted to attend during the search and a copy of the search seizure list shall be delivered to such person.
7. Copy of the list of seized items from the personal search as per Clause 3 of this section shall be handed over to such person
8. The person denying to become witness for the search shall be deemed to have committed an offence u/s 222 of BNS

Videography of search & seizure as per section 105 BNSS

The process of conducting search of a place or taking possession of any property, article or thing under this chapter or u/s 185, including preparation of the list of all things seized in the course of such search and seizure and signing of such list by witnesses, shall be recorded through any audio-video electronic means preferably mobile phone and the police officer shall without delay forward such recording to the DM, SDM or JMFC.

Section – 49

Power to search and stop conveyance.

- a) Rummage and search the conveyance or part thereof
- b) Examine and search any goods on the animal or in the conveyance
- c) If it becomes necessary to stop the animal or the conveyance, he may use all lawful means for stopping it, and where such means fail, the animal or the conveyance may be fired upon.

Conditions under which search of persons shall be conducted

Section – 50

The person to be searched should be made aware of his right to be searched by and or before a Gazetted Officer or a Magistrate.

- i Search of a person to be conducted by officers authorized under Section 41, 42 and 43.
- ii If the person being searched so requires, he should be taken to the nearest Gazetted Officer / Magistrate.
- iii Female person should be searched only by a female officer.
- iv If the officer has reason to believe that it is not possible to take the accused to the nearest Gazetted Officer or Magistrate then search should be carried out under Sec. 103 of BNSS. Thereafter, the officer shall record the reasons for such belief which necessitated such search. Within 72 hrs the officer concerned shall send a copy thereof to his immediate official superior.

- **Section 51** Provisions of the Code of Criminal Procedure, 1973 shall apply to all warrants, arrests, searches and seizures made under the NDPS Act in so far as they are not inconsistent with the provisions of this Act.
- **Section 52A** Provides for pre trial disposal of narcotic drugs before completion of trial in such a manner as prescribed by the Govt.

- **Section-53** (No sooner the empowered officer receives information/intelligence, than he gets the powers of the Officer-in-Charge of a Police Station).

Power to invest officers of certain departments with powers of a officer in –charge of a police station.

The Central Government by Notification can invest any officer of the department of central excise, NCB, customs, DRI or any other department of central government including para-military/armed forces with powers of an officer in charge of a police station. State government may notify any officer of the department of drug control, revenue, excise or any other department with the powers of an officer in charge of a police station.

- **Section 54**

Presumption from possession of illicit articles.

Presumption of the accused having committed an offence if found to possess contraband which he fails to account satisfactorily.

Section 55

- Police to take charge of articles seized and delivered. (Depositing of seized drugs).
- Immediately after seizure, the seizing officer /IO should take steps to deposit the seized drugs / property etc. The seized drugs shall be deposited with the godown keeper of the seized drugs and the samples to be forwarded to the FSL within 48 hrs. of the seizure after drawl in presence of concerned Judicial Magistrate.
- The godown in-charge shall allow any officer who may accompany such articles to the godown / police station who may be deputed for the purpose to affix his seal to such articles or to produce seized items before Magistrate for taking samples from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station.

Section 47 of BNSS

- Section 47(1) of the BNSS requires a police officer or other individual making an arrest without a warrant to immediately inform the person of the grounds for the arrest, including the full details of the offense for which he is being arrested.
- **Mandatory Information:** The police officer is obligated to provide the arrested person with the specific details of the offense he is being arrested for.
- **Timely Disclosure:** This information must be given "immediately" at the time of the arrest.

Article 22 -Protection against arrest and detention in certain cases

- No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.
- Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

Section 57

Report of arrest and seizure

Whenever any person makes any arrest or seizure under the NDPS Act, he shall make a full report of all the particulars of arrest and seizure shall be made within 48 hrs to the immediate superior officer.

Section – 60

1. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation- Provides for confiscation of seized narcotics and psychotropic substances, apparatus, utensils etc.
2. Provides confiscation of the receptacles, packages and coverings in which the NDPS, apparatus, utensils were found.
3. Provides confiscation of the animal or conveyances used for carrying NDPS or controlled substances etc.

Section – 61

Confiscation of goods used for concealing illicit drugs or substances.

Section – 62

Confiscation of sale proceeds of illicit drugs or substances.

Section – 64

Power to tender immunity from prosecution

The Government in view to obtaining the evidence of any person having connivances in any contravention of the Act; tender any person immunity from prosecution for any offence under this Act

Section – 67

Power to call for information etc.

Officer referred to in Sec. 42 authorized in this behalf by Central Govt./State Govt may call for information from any person during the course of enquiry under this Act.

Section – 68

Information as to commission of offences

No officer while exercising the power of NDPS Act shall be compelled to say the source of information

Procedure for Search, Seizure & Arrest

Information must be reduced to writing

- When an officer receives any information or gathers intelligence through personal knowledge regarding narcotic drugs or psychotropic substances or controlled substances or regarding any evidence relating to illegally acquired properties out of drug trafficking, he must reduce it down to writing. This is important to prove that he has reasonable belief to act under law.

Immediate superior authority should be intimated

- A copy of the written information so recorded must be sent within 72 Hours to the immediate official superior. It must be mentioned clearly in the Case file as to when and under what dispatch number the copy of the information so recorded was sent to the immediate official superior. A copy of the letter so sent, must be kept in the case file.

Time of carrying out search

The search, seizure and arrest should normally be done after sunrise and before sunset. However if it is conducted after sunset and before sunrise, the grounds as to why it was felt necessary to take such action and why it was not possible to obtain a warrant should be recorded and copy of the grounds so recorded must be sent within 72 Hours to the immediate official superior.

In the Case file it must be specifically mentioned on which date and under what dispatch number a copy of the grounds so recorded was sent to the official superior. However, search, seizure and arrest may be carried out any time if there is court warrant or if there is authorization from an empowered Gazetted officer or if the Gazetted officer himself is carrying out the same.

Intelligence/ information needs to be verified

- Intelligence gathered or intelligence recorded should invariably be verified. This is required for effective planning and deployment, security of officers and property, and estimating timing of operation. Since resources in the form of manpower, money, equipment, etc., are to be allocated effectively and in the best possible manner, a preliminary verification of the information through different sources and by surveillance should be done before carrying out operation.

Who should conduct operation?

- The search operation should be carried out by an empowered officer above the rank of peon, sepoy or constable. A team leader should be assigned for each team. The operation has to be well coordinated and planned, so that it can be conducted smoothly and efficiently in minimum possible time.
- Each participating officer should be briefed about the objective of the operation and he must know his responsibilities. The team must consist of a female officer if a house search is planned or if a female drug trafficker is to be searched or apprehended.

Items to be carried during search

- The search team should visualize as to what should be required by them, depending on the time and area. Official stamp, brass seal for sealing seized articles, blank paper for recording statement, documents for making seizure list/panchnama, test memo, Drug Detection Kit, plastic bags, envelops, sealing materials, etc.
- Apart from this, necessary equipments like search lamps, wireless sets, camera, binocular, night vision, arms & ammunition, hand cuff etc. should be taken by the search party. Depending on distance to be traveled and area to be visited, the officer should choose the type of vehicle and ensure it to be in good condition.

Search should be conducted in presence of Independent witnesses.

- The search should be conducted in presence of at least two independent and responsible witnesses of the locality and in the presence of the owner / occupier or his representative.

The officers should disclose their identity and purpose of search -

- The officers of the search party should disclose their identity and purpose of the search to the owner/occupier before entering to search a premise. For this, it is required that they should carry their departmental identity cards with photographs on it.**

Personal search- Mandatory procedures

- The members of the search party should offer themselves to be searched before beginning the search operation.
- In case of personal search, the person to be searched must be told that he has a right to be searched in presence of a Magistrate or a Gazetted Officer, if he so desires.
- The officer will take the person to the nearest Gazetted Officer or Magistrate, whosoever is conveniently available.
- The accused can not make a choice of a particular Magistrate or Gazetted Officer.
- If the accused is taken to a Gazetted Officer, he must be taken to such Gazetted Officer as specified in Section 42 of the NDPS ACT

Personal Search- Mandatory Provisions

- If he is taken to any other Gazetted Officer, Section 50 will not be complied.
- No female shall be searched by anyone excepting a female.
- Provisions of Section 50 are mandatory for search of a person and not for the search of premises.
- When the Officer believes that it is not possible to take the person to be searched to the Gazetted Officer or Magistrate and he proceeds with the search in accordance to Section 100 of the Code of Criminal Procedure, 1973, he must record the reasons of such belief and send a copy thereof to his immediate superior Officer within 72 Hours

Personal Search – Mandatory Provisions

- The fact that the information received and the grounds of belief have been recorded in case of action between Sunset and Sunrise, should be mentioned in the case file itself.
- Similarly, all the facts relating to compliance of Section 50 must be mentioned in the Case file and Panchnama.

Preparation of Search List / Panchnama

- After conclusion of the search, a search list is to be prepared. Drugs or things or documents if recovered and also the place of their recovery are invariably to be mentioned in the search list.
- If any personal search is taken, a separate search list is to be prepared.
- In case of no recovery, NIL recovery is to be mentioned in the search list.
- The search list should bear the signature of the person, owner, witnesses along with their names, addresses etc.
- A copy of the search list is to be handed over to the owner of the goods under proper acknowledgement

- Signature of the owner / witnesses / seizing officer to be obtained on the sealed packets
- Brief note of search to be mentioned in detail incorporating the provisions of specified Law for making seizure
- Signature of the owner / witnesses / seizing officer to be obtained on the seizure list .
- A copy of the seizure list to be handed over to the owner on proper receipt
- Issue of notice U/S 67 of NDPS Act, 1985 and u/s 160 CrPC for interrogation
- After seizure, the recovered goods to be kept with the Go-down Officer on proper receipt

e- Sakshya

e-Sakshya is a digital evidence management system used by law enforcement to legally and securely record, store, and submit digital evidence. It consists of a mobile app for real-time evidence capture (like video and images) and a web portal for management, and it is designed to comply with India's new criminal laws, ensuring evidence authenticity and streamlining the judicial process.

e- Sakshya

Key functions

- **Real-time evidence capture:** Allows investigating officers to use the mobile app to record videos and images of crime scenes and evidence, such as search and seizure procedures.
- **Secure storage:** Captures evidence securely and stores it on a cloud-based platform, ensuring tamper-proof documentation and maintaining the chain of custody.
- **Digital authentication:** Verifies and timestamps all recorded materials to maintain their integrity and credibility for legal proceedings.
- **Legal compliance:** Developed in line with the BNSS, which mandates audio-video recording of search and seizure in criminal cases.
- **Integration:** Connects with other systems to exchange information, such as Medico Legal Reports, and is integrated with the CCTNS.

Usage for investigating officers

- **Record and upload:** Officers can record evidence directly from the app and upload it, with the ability to upload multiple files for a single case.
- **Link to FIRs:** The app allows evidence to be linked to First Information Reports (FIRs).
- **Maintain records:** It helps in keeping accurate records and ensures that evidence collection meets updated judicial standards.

Arrest of the accused

- After recording of voluntarily statement of the accused admitting his or her guilt, he or she should be arrested u/s 41, 42 or 43 of the NDPS Act, 1985 as per the case.
- Memo of Arrest to be prepared in details and a copy of the same to be handed over to the arrested person
- Information about arrest to be sent to the nearest relative of the person arrested immediately after arrest.
- Dossiers of the arrested person to be prepared incorporating finger prints
- All the action taken in course of recovery of goods & arrest of accused person may be immediately brought before the notice of the authority in writing
- Crime Register to be maintained properly.

Producing the accused in the Court

- The accused shall be produced before the Court of the respective jurisdiction within 24 hours from the date & time of arrest.
- After completion of the proceedings u/s 52A Original samples drawn by the Magistrate to be sent to FSL within 72 hours alongwith test memos.
- Form-F to be prepared and sent immediately to the respective authorities.
- Court shall be informed about the progress of the investigation when asked.
- Complaint/CS to be filed after completion of the investigation within the stipulated time period i.e. 60/90 days or 180 days as the case may be.

Thank you

