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**GUILTY BY DEFAULT: THE REVERSE BURDEN OF PROOF IN DRUG  
OFFENCE CASES**

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**ABSTRACT**

*In order to curb drug abuse, the Narcotic Drugs and Psychotropic Substances Act of 1985 made it illegal to manufacture, distribute, transport, or consume narcotics and psychotropic substances. While these substances may have legitimate medical use, the Act imposes strict conditions on their handling. Unlike typical criminal laws where the burden lies with the prosecution, the NDPS Act introduces a “reverse burden” under Sections 35 and 54 requiring the accused to prove their innocence once the prosecution establishes certain foundational facts. This deviation raises concerns about constitutional rights, particularly under Articles 14 and 21. Additionally, rigid bail conditions often result in extended pre-trial detention. This paper evaluates the legal and constitutional challenges of these provisions and proposes reforms for a balanced legal approach.*

**KEYWORDS:** *Narcotic drugs and Psychotropic substances act, 1985, Cannabis, Poppies, Coca plants, psychoactive compounds, Burden of proof.*

## 1. INTRODUCTION

Through the enactment of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act), 1985 on November 14, 1985, it became unlawful to manufacture, cultivate, possess, sell, purchase, transport, store, or use narcotics without the appropriate authorities' approval. The NDPS Act, 1985, criminalizes drug-related activities including the production, possession, and sale of narcotics without official permission. Before this Act, India relied on older laws like the Opium Acts and the Dangerous Drugs Act, which were outdated. Historically, substances like cannabis were used openly in Indian culture and even referenced in ancient texts. However, the NDPS Act marked a shift toward stricter regulation and punishment.

## 2. OBJECTIVES OF THE STUDY

1. To review the NDPS Act's legal framework regarding the burden of proof.
2. To examine the implications of Sections 35 and 54 of the Act.
3. To investigate the court's interpretation and implementation of the reverse burden clause.
4. To consider Articles 14, 20, and 21 when assessing the constitutionality of these provisions.

<sup>1</sup>BHARATLAW-BURDEN OF PROOF (last visited May 7, 2025) <https://www.bharatlaw.ai/post/burden-of-proof-vs-presumption-know-the-difference-in-law#:~:text=5.,burden%20lies%20on%20the%20claimant>.

<sup>2</sup> MANUPATRA-EVIDENCE (last visited May 8, 2025) <http://student.manupatra.com/Academic/Abk/Law-of-Evidence/chapter7.html>

5. To make recommendations for legal changes those strike a balance between upholding the law and safeguarding individual liberties.

## 3. BURDEN OF PROOF UNDER BHARATIYA SAKSHYA ADHINIYAM, 2023

The duty placed on a party to support their claims of facts in a legal dispute is known as the burden of proof. It guarantees that assertions are supported by reliable data rather than just conjecture<sup>1</sup>. Sections 104 to 114 of the BSA<sup>2</sup> regulate the burden of proof, outlining who is responsible for it in various situations. The burden of proof principle guarantees that the legal system is rational, equitable, and free of unfounded claims<sup>3</sup>. In order to promote accountability and avoid pointless litigation, the party making an assertion must provide evidence to support it.

## 4. BURDEN OF PROOF UNDER NDPS ACT

During prosecution, courts are permitted by Section 35<sup>4</sup> to assume a culpable mental state, such as intention, knowledge, or motive. The mental intent need not be proven by the prosecution. The accused is presumed to have had it. The accused, however, has the ability to refute this assumption. Rebuttable refers to something that can be refuted, contested, or proven false through evidence. On a "preponderance of probabilities," they must

<sup>3</sup>LEGALWIRES-BURDEN OF PROOF (last visited May 10, 2025) <https://legal-wires.com/lex-opedia/what-is-the-burden-of-proof-under-the-bharatiya-sakshya-adhiniyam-bsa-2023/>

<sup>4</sup>SCCONLINE-NDPS DECISIONS (last visited May 12, 2025) <https://www.scconline.com/blog/post/2024/01/03/important-ndps-decisions-supreme-court-high-courts-2023/>

demonstrate that they most likely lacked the necessary mental state. The prosecution still needs to prove basic facts beyond a reasonable doubt before the presumption applies.

According to Section 54<sup>5</sup>, if someone is found to be in possession of a narcotic or psychotropic substance, the court may presume that they have committed an offence. This is true even if there is no evidence of intent. The presumption is activated by possession alone. To avoid being found guilty, the accused must provide a convincing defence. Only after the court finds conscious possession is the presumption rebuttable. This has been emphasized by the Supreme Court on several occasions.

A party in a legal dispute has the "burden of proof," which is the responsibility to demonstrate the validity of their claims with admissible evidence."

## 5. JUDICIAL DECISIONS RELATED TO NDPS ACT, 1985

There is lot of cases filed and landmark judgments have been recorded related to the NDPS Act, 1985 they are as follows;

### Noor Aga v. State of Punjab<sup>6</sup>

Articles 14 and 21 of the Indian Constitution were allegedly violated by sections 35 and 54, making them unconstitutional. The Supreme Court decided that both of these statutory provisions are constitutional in this particular case. The presumption of innocence is still a fundamental right, according to the Supreme Court, which upheld Sections 35 and 54. Only after the

prosecution establishes important facts does the burden change.

### Mohan Lal v. State of Punjab<sup>7</sup>

The reverse burden of proof is imposed by Sections 35 and 54 of the NDPS Act, respectively, and is not consistent with the general concept of criminal law. According to the Court, the reverse burden does not begin at the outset of the case. Only after the prosecution establishes a prima facie case does it apply.

### Vijay Pandey v. State of UP<sup>8</sup>

The Court decided that the accused cannot be expected to dispute the charges if the prosecution is unable to establish a fundamental case. The presumption is only applicable in cases where the prosecution presents compelling evidence first.

## 6. RECOMMENDATIONS

- ✧ Initiate an independent body, the Presumption Audit Board, to review Section 54 NDPS cases annually. The public would be provided with information on wrongful arrests, conviction rates, and procedural errors. Converts opaque prosecutions into systems that can be monitored and enhanced through the addition of a layer of institutional accountability.
- ✧ Make a "trigger protocol" that outlines the conditions that must be fulfilled, such as validated seizure records, clean forensic reports, and verified weight, before Section 54's presumption is applied. Incorporates procedural justice into the foundation of enforcement, preventing the early weaponization of reverse burden.

<sup>5</sup> Ibid

<sup>6</sup> AIR 2008 SC 6 SCC 417

<sup>7</sup> AIR 2018 SC 3853

<sup>8</sup> AIR 2019SC

✧ Enact legislation requiring prosecutors to first demonstrate a "nexus of control" a clear, verifiable link between the accused and the drugs through witness testimony, digital trails, or surveillance. Filters out framed people and innocent carriers by moving beyond physical possession to a more meaningful standard of control with intent.

4. Legalwires-Burden of Proof (last visited May 10,2025) <https://legal-wires.com/lex-o-pedia/what-is-the-burden-of-proof-under-the-bharatiya-sakshya-adhiniyam-bsa-2023/>

5. SCCONLINE-NDPS Decisions (last visited May 12,2025) <https://www.scconline.com/blog/post/2024/01/03/important-ndps-decisions-supreme-court-high-courts-2023/>

## **7. CONCLUSION**

Thus, the drug problem in India is more complicated than it first appears. The NDPS Act places strict legal restrictions on drugs like cannabis, even though they have historically been used for therapeutic purposes. Although it has aided law enforcement, the reverse burden of proof also raises issues with justice and human rights. Courts are required to make sure that these stringent rules are applied carefully. A well-rounded strategy that discourages drug offences without jeopardizing the rights of the accused is required.

## **8. REFERENCES**

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