

'PERSONAL SEARCH' UNDER NDPS ACT- RESOLVING JUDICIAL DILEMMA IN INTERPRETING SECTION 50 THROUGH PHILOSOPHICAL DISCOURSE

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Introduction

The Narcotics Drugs and Psychotropic Substances Act, 1985, (NDPS Act, for brevity) has created strict liability offences.¹ Section 37 of the Act provides that NDPS cases are cognizable and non-bailable. A person who allegedly commits any offence under the Act has to undergo incarceration till the end of a trial and chances of getting out on a bail are meager. Arrest of a person who has been falsely implicated or wrongly accused is therefore, a serious curtailment on the due process protection. Section 50 of the Act therefore, provides a safeguard to the suspect person by allowing to ask for a 'personal search' in presence of a magistrate or a gazetted officer. The Constitution Bench of the Supreme Court of India in cases of *State of Punjab v. Baldev Singh*², and *Vijay Singh Chandubha Jadejav. State of Gujarat*³, has replaced 'substantial compliance' theory with the 'strict or complete compliance', so that non-compliance means acquittal.

However, the scope of the term 'personal search' has been liberally⁴ and literally⁵ interpreted by the Supreme Court. Those having 'restrictive approach' which is also a commonly followed approach in such cases argues that the personal search means

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¹ The strict liability offences are departure from the general conception that *mens rea* is an essential ingredient of a criminal offence. See, ANDREW ASHWORTH, PRINCIPLES OF CRIMINAL LAW (1991).

² (1999) 6 SCC 172.

³ (2011) 1 SCC 609.

⁴ In following Supreme Court cases, wide interpretation of Section 50 has been used, *Ajmer Singh v. State of Haryana*: (2010) 3 SCC 746; *State of H.P. v. Pawan Kumar*; (2005) 4 SCC 350; *Madan Lal v. State of H.P.* (2003) 7 SCC 465; *Gurbax Singh v. State of Haryana* (2001) 3 SCC 28.

⁵ In following Supreme Court cases, narrow interpretation of Section 50 has been used, *Dilip & Anr. v. State of Madhya Pradesh* (2007) 1 SCC 450; *Union of India v. Shah Alam* (2009) 16 SCC 644; *State of Rajasthan v. Parmanand and Anr.* (2014) 5 SCC 345.

only search of the person and doesn't include the belongings like bag, vehicle of the accused and for their search there is no requirement of the presence of a magistrate or a gazette officer. However, wider connotation of the term includes within its ambit the items like bags, vehicle etc. Thus, there is lack of judicial consensus on the adoption of an interpretative approach to construe Section 50 of the Act. Therefore, an attempt has been made in this paper to juxtapose and critique these approaches by reviewing the judicial decisions. The paper argues that in understanding the law we need to first look into that how law has been shaped by different forces and their role in contextualization of law. Therefore, first part of the paper deals with the legal architectonic⁶ of the NDPS Act. It is based on the work of Prof. Alan Norrie recent work "Justice and the Slaughter Bench: Essays on Law's Broken Dialectic".⁷ The second part goes to the specific issue that how judiciary has liberally and literally interpreted the Section 50. Next, critical analysis of these decisions has been made and in conclusion the need for adopting the wider interpretation of term 'personal search' has been advocated in light of how section 50 seeks to balance competing interest and resolve the tension within the law. Moreover, it is argued that the wider interpretation provides the moral legitimacy to the State to use deterrent punishments even when idea of a responsible legal subject is dissolved.

Understanding the architectonic of NDPS Act

A deeper understanding of the NDPS Act requires it to be examined in light of how it has been shaped by historical, social, political, economic and ethical forces but still manage to maintain its identity.⁸ In the architectonic of NDPS Act there are different forces which create tension within the law and produces different ethical demands from the law. Example, the NDPS Act seeks to balance commercial, political, and ethical questions. For commercial questions it provides for regulation by licensing & excise duty and as well as higher degree of criminalization for dealing in unauthorized commercial quantity, at political level it

⁶ The term legal architectonic has been used by Prof. Alan Norrie in his work, *Law and the Beautiful Soul* to mean something which has been materially constructed in a space and time. The legal architectonic has a sense of its own internal unity and that it has emerged from, and been shaped and structured by, an environment. It is a built form in an historical place so that its architectonic is both intellectual and material. See, ALAN NORRIE, *LAW AND THE BEAUTIFUL SOUL* (2005).

⁷ See, ALAN NORRIE, *JUSTICE AND THE SLAUGHTER BENCH: ESSAYS ON LAW'S BROKEN DIALECTIC* (Glasshouse Book) (1st ed.2017).

⁸ *Id.*

demonstrates the political will to check certain conducts through higher degree of control and at ethical level there are issues of personal liberty, freedom of trade and dangerousness to society. At the core of NDPS Act, is the antinomy between the responsible subject and the dangerous subject. This has been manifested by the higher standard of responsibility upon the subject by omitting the mental blameworthiness. This trend demonstrates the growing authoritarianism in the criminal law whereby the solution to the social evils is through control mechanism at the cost of subjugating the individual responsibility and by conferring more powers to the State. It is in this background that the evolution of NDPS Act need to traced.

The Narcotic Drugs and Psychotropic Substances Act was passed in the 1985 by repealing the Opium Act, 1857, the Opium Act, 1878 and the Dangerous Drugs Act 1930 as the punishment under the erstwhile legislations were not deterrent and were inadequate in dealing with the problem of drugs and psychotropic substances.⁹

Prior to the passing of NDPS Act the policy goal was merely to control the drug trade and the collection of revenues through licensed sales. The NDPS Act also brought within its ambit the personal consumption which was socio-culturally justified in India especially in regard to *cannabis* and opium.¹⁰ In 1988, the NDPS Act was supplemented by the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act to provide for preventive detention of people suspected or accused of involvement in drug trafficking.¹¹

The Opium Acts of 1857 and 1878 were used by the colonial government to bring a heavy control on the cultivation of poppy and the manufacture of opium through licensing. The aim was though only to establish their commercial supremacy rather than to advance any public good. However, with the advent of nationalism in the early 20th century, the nationalist leaders started criticizing the colonial policy which was driven by commercial viability. This earmarked the policy shift as various

⁹ Statement of Objects & Reasons, The Narcotic Drugs and Psychotropic Substances Act, 1985.

¹⁰ M. Charles, D. Bewley-Taylor, & A. Neidpath (October 2005), *Drug policy in India: Compounding harm?*, The Beckley Foundation Drug Policy Programme, Briefing Paper Ten, (30/06/2017, 4:30 p.m.) available at <http://reformdrugpolicy.com/wp-content/uploads/2011/10/Drug-Policy-in-India-CompoundingHarm.pdf>.

¹¹ The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (Act 46 of 1988).

provincial governments'criminalized consumption of opium¹² and regulated cannabis through excise laws¹³. In 1930, the Dangerous Drugs Act was enacted and sought to extend and strengthen control over drugs derived from coca, hemp (cannabis) and poppy plants by regulating the cultivation, possession, manufacture, sale, domestic trade and external transactions through licenses and penalizing unlicensed activities. There were no offences attached to cannabis or to drug consumption. The framework of the Dangerous Drugs Act continues to prevail in the current legislation, especially the statutory definitions for coca, opium, hemp and their derivatives, the category of "manufactured drugs" and the division of rule-making powers between the central and state governments.¹⁴The Drugs and Cosmetics Act, 1940 was adopted for the regulation of medicinal drugs including cannabis and opium. The Dangerous Drugs Act, however, continued to apply.¹⁵

In post-independence period narcotics remained a regulated commodity as a dangerous substance. The philosophy of the constitutional makers is visible in Article 47 of the Constitution which provides that, "The State shall endeavor to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health".¹⁶

At international front, India has ratified theUN Single Convention on Narcotic Drugs, 1961; the UN Convention on Psychotropic Substances, 1971and theUN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,1988.

The NDPS Act was passed by Indian parliament due to international commitments under the conventions. However, the legislation was passed hastily without much debate. The Act was amended in 1989, 2001 and more recently in 2014. The object of NDPS Act is to make stringent provisions for control and

¹² See, The Assam Opium Smoking Act, 1927, the Bengal Opium Smoking Act, 1932, and the Bombay Opium Smoking Act, 1936 criminalized a range of activities around opium smoking, including smoking individually or with two or more people, possession of paraphernalia and allowing premises to be used for opium smoking.

¹³ See, Bengal Excise Act 1909; Punjab Excise Act 1914; Madhya Pradesh Excise Act, 1915. Wholesale and retail trade in cannabis was permitted under these laws, subject to quantity limits. The drug, however, could not be sold to women and persons under the age of 25.

¹⁴ TriptiTandon, *Drug policy in India*, IDPC Briefing Paper (Feb. 2015), http://idhdp.com/media/400258/idpc-briefing-paper_drug-policy-in-india.pdf.

¹⁵ *Id.*

¹⁶ THE CONSTITUTION OF INDIA, ARTICLE 47.

regulation of operations relating to those drugs and substances. At the same time, to avoid harm to the innocent persons and to avoid abuse of the provisions by the officers, certain safeguards are provided which in the context have to be observed strictly.¹⁷

Judicial interpretation of the Section 50: Restrictive approach

Section 50 of the Act lays down the conditions under which search of a person, who is suspect of possessing contraband, shall be conducted. Clause 1 provides that, "When any officer duly authorized under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazette Officer of any of the departments mentioned in section 42 or to the nearest Magistrate."

The Constitution Bench in *State of Punjab v. Baldev Singh*¹⁸, while dealing with the scope of Section 50 of NDPS Act had emphasized upon the aspect of availability of right of an accused to have 'personal search' conducted before a Gazetted Officer or a Magistrate and regarded this right as 'sacrosanct and indefeasible'. If the prosecution disregards this right it will do it at its peril. The Court however said that the same has to be determined "by the court on the basis of the evidence led at the trial and the finding on that issue, one way or the other, would be relevant for recording an order of conviction or acquittal." The Court said that it is not advisable to cut short the criminal trial "without giving an opportunity to the prosecution to establish at the trial that the provisions of Section 50, and particularly, the safeguards provided in that section were complied with..."

Further, in *Gurbax Singh* case¹⁹, apex court referring to *Baldev Singh*²⁰ observed that the right under Section 50 is extension of right conferred under Section 100 (3) of the Criminal Procedure Code. Sub-Section (1) of Section 100 of the Code provides that whenever any place liable to search or inspection is closed, any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein. Sub-Section (3) provides that where any person in or about such place is

¹⁷ State of Rajasthan v. Jag Raj Singh, 2016 SCC OnLine SC 619.

¹⁸ (1999) 6 SCC 172.

¹⁹ Gurbax Singh v. State of Haryana (2001) 3 SCC 28.

²⁰ *Supra*note 18.

reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency. Sub-section (7) of Section 100 further provides that when any person is searched under sub-section (3) a list of all things taken possession of shall be prepared and a copy thereof shall be delivered to such person. This would also be clear if we refer to search and seizure, procedure provided under Sections 42 and 43 of the building, conveyance or place. Hence, in our view, Section 50 of the N.D.P.S. Act would be applicable only in those cases where the search of the person is carried out."

Relying upon the decisions in case of *Kalema Tumba*²¹, *Gurbax Singh* case and *Baldev Singh* case²², the apex court in *Madan Lal* case²³ observed that the scope of section 50 if literally read would extend only to personal search and doesn't extend to "to search of a vehicle or a container or a bag or premises". The Court held that the language of Section 50 in unambiguous terms implicitly lies down "that the search has to be in relation to a person as contrasted to search of premises, vehicles or articles."

The similar views of the apex court were echoed in *Pawan Kumar* case²⁴ and the *Ajmer Singh* case²⁵. In *Pawan Kumar* the apex court more clearly stated that "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." The court reasoned that a person of varying capacity can carry different items on his or her body but that doesn't make those items as a part of body. Court observed, "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, *Pawan Kumar* concluded

²¹ *Kalema Tumba v. State of Maharashtra*, (1999) 8 SCC 257,

²² *Supranote*18.

²³ *Madan Lal v. State of H.P.*, (2003) 7 SCC 465.

²⁴ *State of H.P. v. Pawan Kumar*, (2005) 4 SCC 350.

²⁵ *Ajmer Singh v. State of Haryana*, (2010) 3 SCC 746.

that an external article which doesn't form part of body is outside the ambit of the word 'person' occurring in Section 50 of the Act.

Echoing the same view, the apex court in *Ajmer Singh*²⁶ ruled that the accused is not covered by the protection of section 50 as the opium was recovered from a bag carried out by the accused and therefore, the contention of the counsel that "provision of Section 50 of the Act would also apply, while searching the bag, briefcase, etc. carried by the person and its non-compliance would be fatal to the proceedings initiated under the Act" was negated.

The wider interpretation of term 'personal search' in judicial decisions

The decisions which have been discussed above represent a commonly followed opinion on the interpretation of section 50. However, there are quite a few judgments wherein the apex courts have taken a different stand and have held that the term 'personal search' would also include the items carried by the suspect. In *Dilip's case*²⁷ the apex court didn't directly ruled that search of an item would also mean personal search but, it came other way saying that whenever both person and the item carried out by the person is searched then the presence of Magistrate of gazetted officer is mandatory. The court observed, "...search of the person of the accused was conducted. Nothing was found on their person. But on search of the scooter they were riding, opium contained in plastic bag was recovered. This Court held that provisions of Section 50 might not have been required to be complied with so far as the search of the scooter is concerned, but keeping in view the fact that the person of the accused was also searched, it was obligatory on the part of the officers to comply with the said provisions, which was not done. This Court confirmed the acquittal of the accused."

While in *Dilip's case*, the body was searched first and then scooter, in *Shah Alam's case*²⁸ it is *vice versa*. First, the bag was searched from which heroin was recovered and then the body was searched but nothing was recovered from the body. The State contended that since "personal search did not lead to any recovery, there was no need to comply with the provisions of Section 50 of the NDPS Act." However, the court rejecting the contention of the State followed *Dilip's* ratio and held that "since the provisions of Section 50 of the NDPS Act were not complied with, the High Court was

²⁶ *Ajmer Singh v. State of Haryana*, (2010) 3 SCC 746.

²⁷ *Dilip & Anr. v. State of Madhya Pradesh*, (2007) 1 SCC 450.

²⁸ *Union of India v. Shah Alam*, (2009) 16 SCC 644.

right in acquitting the respondents on that ground.” The recent judgment of the apex court in *Parmanand* case²⁹ summarize the position which projects the broader interpretation of section 50 of the Act in following words, “thus, if merely a bag carried by a person is searched without there being any search of his person, Section 50 of the NDPS Act will have no application. But if the bag carried by him is searched and his person is also searched, Section 50 of the NDPS Act will have application”

These ratios don't seem to be in prima facie contravention with the judicial line of thinking in *Baldev Singh* case³⁰ and other similarly decided cases as the issue in this case has been portrayed in a somewhat different manner and seems to be a case of first instance. But, looking holistically this ratio has the capability to dent the ratios of decision followed in *Baldev Singh* line of thinking. Thus, wherever there is a mixed question of search of a being as well as item then the compliance of section 50 is mandatory and only in those cases where solely item is searched then the operation of Section 50 can be avoided.

Critical analysis of judicial decisions

The law on the application of Section 50 is no more a *res integrato* the extent that a magistrate or gazetted officer should be present during personal search, if the suspect asks so and his being is to be searched. It has been well settled by the two Constitution Bench of the Supreme Court of India in case of *State of Baldev Singh and Vijay Singh Chandubha Jadeja*.³¹ Since, it would be tedious to reiterate what have been observed in these constitutional bench judgments, suffice would be to state that the theory of ‘substantial compliance’ has been replaced with ‘strict or complete compliance’. Requirement under section 50 is not merely an empty formality but, is mandatory and strict compliance of it is required and failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is upheld on the basis that during person's search the recovery of the illicit article from the person of the accused has been made.

Moreover, there are quite a few cases where police have conducted search of bags, vehicle etc. in the presence of a gazette officer. In case of *Mahiman Singh v. State of Utrakhand*³², police upon

²⁹ State of Rajasthan v. Parmanand and Anr., (2014) 5 SCC 345.

³⁰ (1999) 6 SCC 172.

³¹ Vijay Singh Chandubha Jadeja v. State of Gujarat, (2011) 1 SCC 609.

³² 2016 CRI.L.J. 4407.

information that the accused is carrying commercial quantity of *charas* in his jeep intercepted the vehicle for the purpose of search. The accused upon suspicion was asked if he wants to be searched in presence of a gazetted officer. The accused was then searched in presence of a Naib Tahsildar and the recovery was made. Now under this case, though as per *Baldev Singh* case³³ there was no obligation on the part of the police officer to carry out search in presence of a gazetted officer, the opportunity was afforded to the suspect. Similarly, conditions under section 50 were compiled in the case of *Jag Raj Singh*³⁴ even though the contraband material was present in a bag in jeep. So, these are the illustration of the cases where police themselves has extended the benefit of the beneficiary provision to the accused. But, this doesn't solve the problem as the liberty of still many is still at stakes till the ambiguity in the provision is ironed out.

However, the grey area emerges from the fact of interpretation of term 'personal search' in section 50 of the Act. Further, what emerges from the above discussion is that the applicability of Section 50 can't be completely ruled out when accused is travelling in a vehicle and the police officer searches both the suspect person and suspected vehicle accompanying him. It is argued that the apprehension of false implication that is intended to guard a person under Section 50 by placing restriction on Police while conducting the search of a person of accused, highlighted by *Baldev Singh* case, must also *mutatis mutandis* apply when vehicle of accused is searched by Police. In cases where person is suspect of carrying commercial quantity, it is obvious that such commercial quantity can't be filled up in pockets; obviously the accused will carry some bag, vehicle etc. where he will keep or hide commercial quantity of contraband and narcotic substance. Therefore, the narrow interpretation of Section 50 restricting its scope only to the search of a person of accused will not satisfy the object, as the apprehension of person will remain to continue that he may still be implicated by police or any other person, for more stringent punishment of carrying commercial quantity, by getting rid of rigor of mandatory provision of section 50 by placing the contraband subject in a vehicle, bag etc. accompanying the person. In case of *State v. Klein*³⁵, the issue before the US court was that, whether, a person can be held guilty for burglary when such person didn't enter the house *per se* but

³³ *Supranote 18.*

³⁴ *Supranote 17.*

³⁵ John C. Derrnbachet.al., *A Practical Guide to Legal Writing and Legal Method* (1994).

tried to steal the object with the help of tree snips. The statute clearly stated that for burglary to happen, defendant should be physically present. In this case, although the defendant in this case never entered the house, he did extend his tree snips through the window. The Court held that, "there is no meaningful difference between the snips and his arm because the penetration by the snips was merely an extension of Klein's person." Therefore, in this case the object which a person was carrying was held to be part of his body. The similar view can also be adopted while interpreting the term 'personal search'.

Further, it is a settled principle of law that when two views are possible from interpretation of a section then one favoring the accused should be adopted. The Section 50 should be purposively interpreted in light of the avowed object behind the provision. The apex court in case of *Municipal Corporation of Greater Bombay v. Indian Oil Corporation*³⁶ adopted purposive construction in the definition of the word 'building' for the purpose of levy of property tax under the Bombay Municipal Corporation Act to include oil storage-tanks to be "building". The court observed that, "the language of a statutory provision is not static vehicle of ideas and concepts and as ideas and concepts change, as they are bound to do in any country like-ours with the establishment of a democratic structure based on egalitarian values, the meaning and content of the statutory provision undergo a change. The law does not operate in a vacuum.

It cannot be interpreted without taking into account the social, economic and political setting in which it is intended to operate. The Judge has to inject flesh and blood in the dry skeleton provided by the legislature and invest it with a meaning which will harmonies the law with the prevailing concepts and values and make it an effective instrument for delivering justice. The apex court in the case of *Beckodan Abdul Rahim v. State of Kerala*³⁷ clearly spelled the purpose behind the section 50 of the Act. It observed that "the safeguards mentioned in Section 50 are intended to serve a dual purpose to protect the person against false accusation and frivolous charges as also to lend credibility to the search and seizure conducted by the empowered officer." Therefore, in light of above section 50 should be interpreted liberally.

Conclusion

³⁶ Municipal Corporation of Greater Bombay v. Indian Oil Corporation, AIR 1991 SC 686.

³⁷ (2002) 4 SCC 229.

The use by the state of criminal law machinery to address some types of wrongs is the most severe step which a State can take, as if it is exercised, it can lead to deprivation of individual liberty and also life, in extreme cases. NDPS Act creates strict liability offence. The stringent punishments have been provided under the Act to *deter* certain acts. The doing away with the requirement of *mens rea* means that the justification for the State to punish the offence should be based on a conception other than the Kantian idea of responsibility.³⁸ The strict liability criminal legislations present a unique challenge as they are against the norms of liberal criminal law but, still the society generally accepts to be governed by such law without any resistance.³⁹ The NDPS Act can be attempted to be justified as one promoting greater good by curbing certain dangerous acts by way of stringent punishment. However, the ideas of dangerousness in itself remain questionable and self-contradictory and attacked as being too much subjective. Thus, the quest is to balance the individual liberty with the public good. The one way of understanding is to look into historical evolution, political ideology, moral philosophy and how all of them have shaped the individual responsibility in the framework of NDPS Act. The present NDPS Act has been shaped by all of above factors and in addition to it has been in a larger manner impacted by international morality. The aims of the NDPS Act in colonial regime was commercial gains through licensing, during independence movement it was to promote public good through criminalizing and taxation, and post-independence the approach is prohibitory, regulatory in certain aspects like medicinal use and deterrent punishment in criminal law.

What sets apart Section 50 along with Sections 42 & 43 from the rest of the provision of the NDPS Act is the balancing task which they seek to achieve. The constitutional philosophy embodied in Articles 20, 21 & 22 clearly lays down groundwork for the procedural fairness in Criminal Law. Article 20 of the Constitution forms the basis for 'Doctrine of Legality', Article 21 establishes doctrine of 'due process of law' and Article 22 safeguards the 'rights of the offenders'. Thus, NDPS Act also need to be situated within the broader framework of rights enumerated in Part III to make it justifiable way of depriving individual liberty.

While, the emphasis in the objects and reasons of the NDPS Act is deterrence through stringent punishment, Section 50 is intended to be a safety valve before an intervention is made in the suspect's

³⁸ See, ALAN NORRIE, CRIME, REASON AND HISTORY (2014).

³⁹ See, PETER RAMSAY, THE INSECURITY STATE (2012).

personal liberty. The reason being that once a person is arrested for possessing commercial quantity of contraband and then put on to face the charges in trial, the incarceration is sure till the trial is over as the chances of getting bail is negligible, as opposed to conventional principles standard burden of proof is on the accused that he didn't possess the contraband and the knowledge or intention behind the possession is immaterial. Thus, the requirement of 'personal search in presence of gazetted officer' and 'search in public place' has been held to be mandatory requirements by the apex court. Therefore, the term 'personal search' should be given a much wider interpretation as than the two views cited above. The two views seem to be reconcilable, but there is not direct authoritative case which pronounces so. Any kind of ambiguity in the criminal law due to cleavage of judicial opinion is dangerous as they may not become known to the lay people or even the lawyers; but, still they keep the individual liberty at peril. In addition to above views it is suggested that even when the search of being is not carried out but only search of an accompanying object is carried out even then the protection of Section 50 should be stretched. The case of *Klein* cited above shows that how the being of a person is stretched to animate object in order to achieve the object of the statute. Section 50 in a sense performs the legitimizing function for the imposition of harsher punishments and therefore, a liberal interpretation need to be adopted because the question is about the liberty of an individual and the interpretation in a particular manner goes to the question of legitimacy of the manner of employability of the criminal law.