

THE WORKING OF

THE NDPS ACT

IN PUNJAB

VOLUME 1

FROM ADDICT TO CONVICT

THE WORKING OF THE NDPS ACT IN PUNJAB

VOLUME 1



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CONTENTS

List of Tables, Graphs, Boxes, Illustrations	2
List of Abbreviations	4
Executive Summary	7
Introduction	16
Context and Purpose of the Study: The NDPS Act	18
Methodology	20
Part I Background to the NDPS Act	24
Legislative Developments of the NDPS Act	26
Overview of the NDPS Act	32
Overview of Punjab's Drug Situation	35
Part II Deterrence and the NDPS Act	38
Deterrence and Strict Liability Provisions in the NDPS Act	40
NDPS Act and Intermediate Quantity Cases	46
NDPS Act and Commercial Quantity Cases	52
Arbitrary Sentencing in Pharmaceutical Drug Cases	58
Conclusion	62
Part III De-addiction and Rehabilitation	64
Approaches to De-addiction and Rehabilitation	66
Part IV Conclusion and Recommendations	76
Appendix	83

**TABLES, GRAPHS,
BOXES, ILLUSTRATIONS**

Table 1	Data Extraction and Sample Details	20
Table 2	Classification of Narcotic Drugs and Pharmaceutical Drugs	21
Table 3	Classification of Drugs: Small Quantity, Intermediate Quantity and Commercial Quantity	22
Table 4	Ingredient Composition of Pharmaceutical Drugs: Tablets, Capsules and Injections	22
Table 5	Offences and Penalties under Key Sections of the NDPS Act	33
Table 6	Percentage of Pharmaceutical Drug Cases out of Total Number of Cases	37
Table 7	Cases under Sessions Court—Year 2015, Patiala	41
Table 8	Prison Data	41
Table 9a	Strings of Phrases in Police Narratives	43
Table 9b	Police Narratives and Most Commonly Occurring Strings of Phrases	44
Table 10	Percentage of Cases under Intermediate Quantity and Commercial Quantity	47
Table 11	Sentencing Patterns for Narcotic Drug Cases: Data across Districts	48
Table 12a	Total Cases for Smack-related Offences in Intermediate Quantity, Patiala (2013–15)	49
Table 12b	Total Cases for Poppy-husk-related Offences in Intermediate Quantity, Patiala (2013–15)	49
Table 13	Total Number of Prisoners under Various Sections of the NDPS Act in Punjab	52
Table 14	Total Number of Prisoners Sentenced to Ten Years and Above under the NDPS Act in Punjab	53
Table 15	Lowest Drug Recovery Qualifying as Commercial Quantity	55
Table 16a	Judgments Across Districts for Similar Offences—Patiala and Jalandhar	58
Table 16b	Judgments in Patiala for Similar Offences	59
Table 17	Pattern of Drug Addiction in Punjab	66
Table 18	IRCA's Managed by NGOs in Punjab	70
Table 19	Available Facilities and Number of Cases under the NDPS Act (2014) in Punjab	71
Table 20	Demand Reduction Strategies in De-addiction and Rehabilitation Centres	74
Graph 1	Age-distribution of Punjab Population	36
Graph 2	Convictions and Acquittals	40
Graph 3	Convictions and Acquittals for Narcotic Drug (Commercial) Cases in Punjab	40
Graph 4	Convictions and Acquittals for Narcotic Drug (Intermediate) Cases in Punjab	40
Graph 5	Occurrence of Cases in Punjab: Classification based on the Schedule (NDPS Act) 2013–15	46
Graph 6	Average Sentences for Narcotic Drug Cases in Punjab	48
Graph 7	Number of Cases: Kapurthala (Poppy Husk)	50
Graph 8	Number of Cases: Ludhiana (Smack)	50
Graph 9	Total Number of Prisoners: NDPS Act in Punjab	52
Graph 10	Number of Prisoners Sentenced to Ten Years and Above	53
Graph 11	Average Sentences for Pharmaceutical Drug Cases in Punjab	57
Graph 12	Average Sentencing Period: Comparison	57
Graph 13	14 Years Aggregate Data of Cases Registered and Persons Arrested	63
Graph 14	Per-Capita Rate of Crime (Year Wise)	63
Graph 15	Total Number of Government and Private (De-addiction and Rehabilitation) Centres	69
Box 1	Drawbacks Highlighted by Specific MPs	27
Box 2	Standard Template Examples from Mansa and Kapurthala	45
Box 3	Specific Provisions for Addicts in the NDPS Act	68
Illustrations 1 & 2	Classification of Total Cases in Punjab: Commercial and Intermediate Drug Quantity	56
Illustration 3	Drug Use in Punjab	67

ABBREVIATIONS

AIIMS All India Institute of Medical Sciences
BJP Bharatiya Janata Party
CBN Central Bureau of Narcotics
CEIB Central Economic Intelligence Bureau
CPI Communist Party of India
CPI (M) Communist Party of India (Marxist)
CrPC Code of Criminal Procedure
GDP Gross Domestic Product
INC Indian National Congress
IPD In-Patient Department
IRCA Integrated Rehabilitation Centre for Addicts
JD (S) Janata Dal (Secular)
JIPMER Jawaharlal Institute of Postgraduate Medical Education & Research
LSD Lysergic Acid Diethylamide
MNREGA Mahatma Gandhi National Rural Employment Guarantee Act
MoHFW Ministry of Health and Family Welfare
MoSJE Ministry of Social Justice and Empowerment
MP Member of Parliament
NACEN National Academy of Customs, Excise and Narcotics
NCB Narcotics Control Bureau
NDDTC National Drug Dependence Treatment Centre
NDPS Narcotic Drugs and Psychotropic Substances Act
NIMHANS National Institute of Mental Health & Neuro-Sciences
OPD Out-Patient Department
OST Opioid Substitution Treatment
PGIMER Post-Graduate Institute of Medical Education and Research
PITNDPS Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act
PODS Punjab Opioid Dependence Survey
RTI Right to Information
SPYM Society for Promotion of Youth and Masses
UNODC United Nations Office on Drugs and Crime

EXECUTIVE SUMMARY

The Narcotic Drugs and Psychotropic Substances Act (NDPS Act), 1985 consolidates laws with regards to the possession, consumption and sale of drugs. The Act, through its many amendments, seeks to achieve (a) deterrence of drug trafficking through severe punishments and (b) rehabilitation of drug addicts. The law provides for medical treatment and de-addiction for individuals identified as drug addicts.

The NDPS Act has failed to meet its twin objectives of deterrence and rehabilitation in Punjab. Being a border State, Punjab's geographical proximity to the drug trafficking zones of Pakistan, Himachal Pradesh and Rajasthan has contributed to drug addiction within its districts. Within the State, the aftermath of the Green Revolution triggered economic and psychological scars among the youth as a result of rising unemployment, lack of non-farm jobs and growing frustration. While a combination of internal and external factors contributed to the 'drug menace' in Punjab, the gravity of the situation took centre stage in 2013, when the State recorded 42.3% (14,564 cases) of the total number of cases (34,668 cases) under the NDPS Act—the highest crime-rate for drug offences across India.

From Addict to Convict: The Working of the NDPS Act in Punjab (henceforth 'the Report') was conceptualised in order to fill various gaps in understanding Punjab's drug situation. The study evaluates whether

drug trafficking and addiction can be curtailed by harsh punishments under the Act, and whether drug addicts are being effectively rehabilitated into society. The study focuses on strict liability provisions of the law, where punishment is assigned by virtue of a wrongful act (possession of drugs) independent of any accompanying intent or mental state (trafficking, sale, consumption etc.). This study is perhaps the first attempt to use law as a lens to study this pressing drug issue.

Part I of the Report provides a background to the NDPS Act, along with an overview of Punjab's drug situation. It briefly touches upon the legislative history of the NDPS Act, along with all its amendments. In the context of Punjab, the Report finds that despite the changing nature and type of drugs consumed over the years, overall addiction and use has continued unabated. Further, the data reveals that 71.4% of all people coming to the Special Court under the NDPS Act for drug offences, across 18 districts of Punjab between 2013–15, were in the age group of 20–40 years, of which about 40% were between the ages of 20–30 years.

Part II of the Report examines the efficacy of the NDPS Act in deterring drug-related offences, particularly its strict liability provisions. The Report finds that deterrent punishment has not resulted in lowering drug crimes. Further, the application of the

NDPS Act in Punjab has led to several inconsistencies on the ground. Strict liability provisions have led to high convictions under the NDPS Act, but most of these are not cases of drug trafficking.

In fact, the data suggests that between 70–90% of the total drug cases coming to Special Courts are intermediate quantity cases. Even within the category of intermediate quantity, most cases fall closer to the category of small quantity. The law determines sentences based on the quantity of drugs recovered—classified as small and commercial quantity in the Schedule. However, the Schedule does not classify intermediate quantity cases, or offences which fall in the range between small and commercial quantity.

This creates ambiguity in the application of the law with regards to most drug cases in Punjab. As a negatively-defined category, intermediate quantity cases receive disparate sentences, due to the wide range of punishments available to a judge together with a lack of sentencing guidelines. Because of this arbitrariness, addicts found with intermediate quantities of drugs are being denied de-addiction treatment. The Report problematises high convictions under the NDPS Act on two grounds: (a) they do not offer a long-term solution to the problem of drug addiction, even if achieved effectively and (b) contrary to the original conceptualisation of the law, they do not comprise cases of trafficking.

The Report also notes disproportionate punishment for pharmaceutical drug cases. The data reveals that the average sentence awarded to pharmaceutical drug cases was 10 years and above, far above the average awarded to narcotic drug cases, which was merely one to three months. This is mainly because an executive notification was issued, which fundamentally changed the interpretation of the law with regards to drug quantity and the corresponding punishment.

Due to its strict liability provisions, the law does not require information beyond proof of drug possession to convict an individual. The Report finds, worryingly, that police narratives in chargesheets for drug offences are uniform and repetitive across all districts. This uniformity suggests that the police are not incentivised to look deeply into the reasons for possession, such as consumption, sale etc. It also indicates that penal sanctions under the NDPS Act do not distinguish cases of personal use and addiction from offences involving drug trafficking and sale. These sanctions also do not address the rehabilitative needs of users.

Part III of the Report assesses the approaches to de-addiction and rehabilitation for drug addicts in Punjab. It looks into the facilities for prevention, treatment and rehabilitation of addicts. It finds that government-run centres for addicts are inadequate, compared to the number of cases under the NDPS Act

in 2014 and the total number of In-Patient Department patients.¹ Even though private de-addiction and rehabilitation centres outnumber government facilities, they are not present in all districts. Further, the Report details how individuals who should have ideally received the benefit of probation or de-addiction have been directed to the criminal justice system, without being offered long-term solutions for addiction. The findings illustrate that till date, there has been no individual directed by the Special Courts to de-addiction centres.

1. In-patient Department patients are patients whose condition require admission to a hospital.

In Part IV, the final section of the Report, we conclude that Punjab is faced with prison overcrowding, infrastructural constraints and incarceration of a disproportionate number of drug addicts. Addiction continues to be regarded as a criminal offence by the police, prosecution and courts, instead of a public health concern, in need of medical attention. Long-term treatment approaches to addiction have not been effectively pursued. Even when de-addiction centres are available, treatment and demand reduction strategies at most hospitals remain inadequate.

To effectively tackle the whole process involved with drug de-addiction, it is imperative to allocate demand reduction, treatment and rehabilitation to one single Ministry, be it the Ministry of Social Justice and Empowerment, or the Ministry of Health

and Family Welfare. This will help avoid confusion as to the role and responsibility of the Ministry and help achieve better accountability.

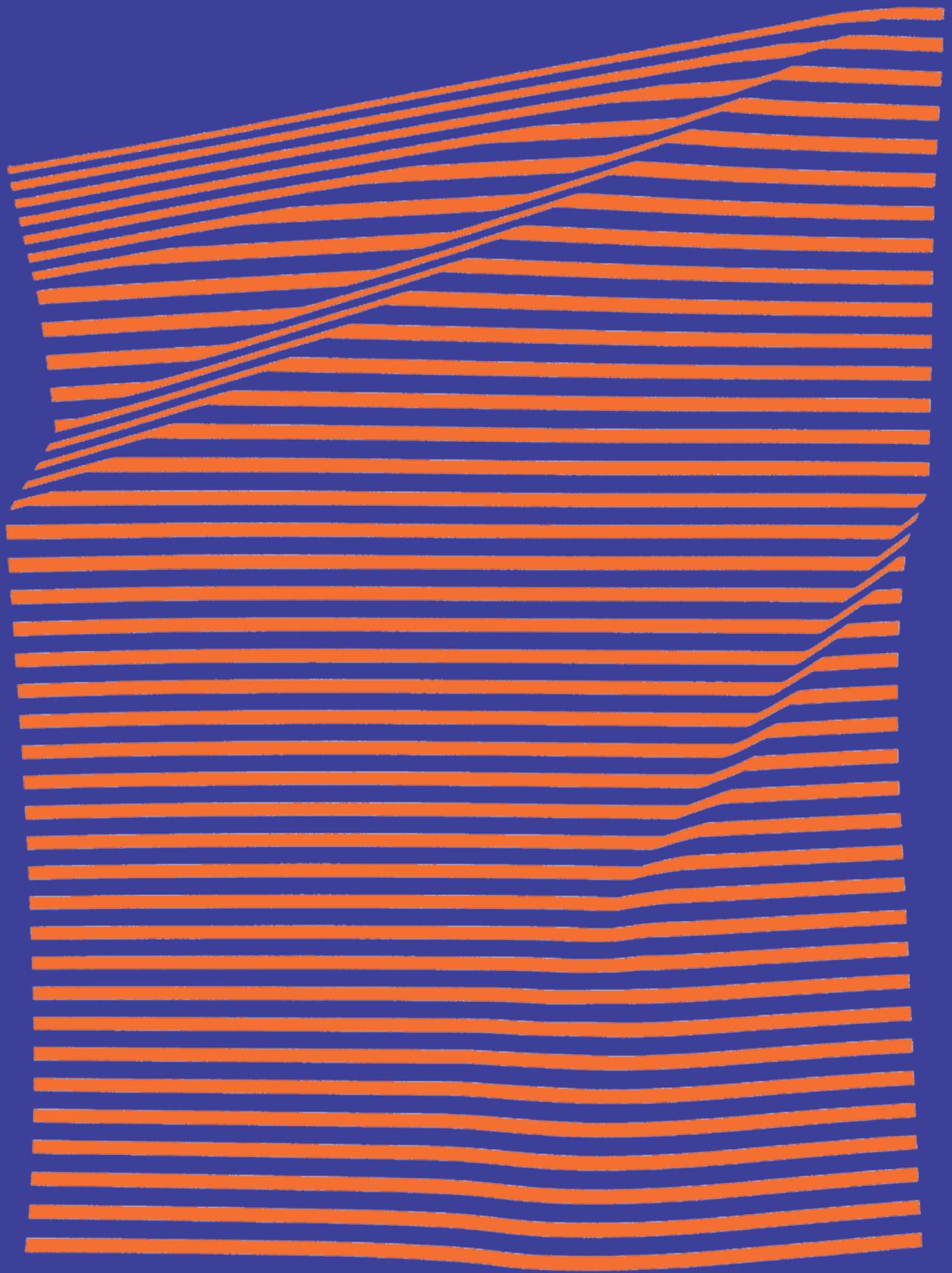
The Report strongly recommends that drug consumption be decriminalised, and a public health approach be adopted. The law should encourage diverting addicts through the non-punitive sections of the NDPS Act, regardless of whether they have been found with a small or intermediate quantity of drugs. Police and the judiciary should be trained to better implement these non-punitive provisions. An effective treatment strategy should be developed by consulting experts, partner agencies and service users; conducting sound assessment and planning; and allocating adequate resources according to the needs of addicts.

“Imagine if the government chased sick people with diabetes, put a tax on insulin and drove it into the black market, told doctors they couldn’t treat them...then sent them to jail.

If we did that,
everyone would
know we were
crazy. Yet we do
practically the
same thing every
day in the week
to sick people
hooked on drugs.”

Billie Holiday

quoted in Johann Hari, *Chasing the Scream:
The First and Last Days of the War on Drugs*



INTRODUCTION

Context & Purpose of the Study: The NDPS Act

This chapter explores the problems associated with the Narcotic Drugs and Psychotropic Substances Act, 1985 (“NDPS Act”). It then delves into the reasons for studying the NDPS Act in Punjab.

Problems with the NDPS Act

The NDPS Act was enacted to fulfil India’s obligations under a series of international conventions. The law reiterated India’s commitment towards eradicating the drug problem in the country. It also consolidated laws with regards to drug offences.

The NDPS Act seeks to achieve (a) deterrence of drug traffickers and (b) rehabilitation of drug addicts and users. Further, the law aims ‘to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances.’ Stringent provisions are incorporated in the NDPS Act mainly through strict liability. Several offences have strict liability, i.e., they require no intention of committing a crime; the burden of proof is on the purported offenders and the provisions for bail are rigid.

The law makes a clear distinction between individual drug consumers and drug traffickers. While the latter are subject to strict penal action, the former can be diverted to rehabilitation. However, the NDPS Act has failed at achieving its twin strategies of deterrence and rehabilitation. This is largely because under the law, even though it distinguishes individual consumers from traffickers, consumption of drugs is still *prima facie* criminalised.

While strict liability provisions are considered deterrent, application of these provisions has not resulted in high punishment lowering crime rates. In fact, despite these provisions, the recorded crime rate under the NDPS Act has increased in Punjab over the last ten years since 2002.

Why Punjab?

The twin objectives of the NDPS Act—that of deterring traffickers and rehabilitating addicts—are especially relevant in the State of Punjab. Punjab’s geographical location makes it particularly susceptible to both drug trafficking and addiction. It is flanked by the heroin-producing Golden Crescent (Iran, Afghanistan and Pakistan), charas and hashish-producing areas of Himachal Pradesh, and opium and poppy husk-producing areas of Rajasthan and Madhya Pradesh.

Despite the significance of the NDPS Act in Punjab, there has been no systematic study to evaluate its impact. The Law Commission of India did examine the Act in July 1997, but the study is dated and did not rely on any empirical data or evidence. Thus, there is a

lack of information about the law's implementation. Additionally, there is limited accurate data on many parameters. For example, numbers regarding district-wise distribution and pattern of drug use, number of prisoners, and the availability of institutional mechanisms for rehabilitation are simply not recorded.

The first (and till date, only) nation-wide survey in 2004, carried out jointly by the Ministry of Social Justice and Empowerment (MoS-JE) and the United Nations Office on Drugs and Crime (UNODC), found that opiate use in Punjab was higher than average in the country. It was then home to 56% of Indian opium users, followed by Rajasthan at a distant 11% and Haryana, 6%. In 2013, Punjab had the highest number of cases registered under the NDPS Act in India, 14,654 out of 34,668, a considerable 42.2%.

Although there has never been a state-wide survey of drug addiction in Punjab, several independent studies have indicated excessive use of drugs and psychotropic substances in the State. The Punjab Opioid Dependence Survey (PODS), 2015 found that drug addiction was primarily a male problem, but it was prevalent among both rural and urban populations. The profile of addicts ranged from unskilled workers, farmers and transport workers, to businessmen and skilled workers.

Whilst there is extensive commentary on how political factors, cross-border trafficking, narco-terrorism etc. have led to a proliferation of drugs in Punjab, there has been no attempt to understand how law has impacted drug use and trafficking in Punjab.

In light of these reasons, and to fill the larger research vacuum surrounding the NDPS Act, the Vidhi Centre for Legal Policy decided to evaluate the Act's effectiveness in Punjab. The study seeks to ascertain whether the Act effectively meets its twin objectives of deterrence and rehabilitation in Punjab. It sheds light on larger questions such as—whether harsh punishments can lower crime rates, and whether drug addicts are being effectively rehabilitated into society under the NDPS Act. This Report is perhaps the first attempt to use law as a lens to study this pressing issue.

Methodology

A mixed-methods research approach has been adopted, including quantitative and qualitative methodologies. This Report is primarily based on a quantitative analysis of 13,350 cases, registered in Special Courts in Punjab under the NDPS Act between 2013 and 2015.² Data on these cases and their judgments were extracted from the Special Courts websites. In the Report, such analysis is combined with information gathered from field visits to Punjab. Resources such as parliamentary debates and questions, various committee reports, and the text of the NDPS Act, inclusive of all Amendments, have also contributed to our assessment of the drug situation in Punjab.

2. Small quantity drug cases are adjudicated by Magistrates' Courts. Under S.36A of the NDPS Act, Special Courts in Punjab only look at cases which involve drug recovery in intermediate and commercial quantities.

Data Compilation

Our data set includes judgments from cases filed in 18 districts of Punjab (see Table 1). We initially extracted 14,344 cases and their judgments from the respective Special Courts websites. We then removed

DISTRICT NAME	TOTAL CASES*	CASES CONSIDERED
Amritsar	2934	1396
Barnala	326	252
Bathinda	1299	997
Faridkot	527	178
Fatehgarh-Sahib	679	492
Ferozepur	1924	685
Gurdaspur	783	67
Hoshiarpur	787	568
Jalandhar	3266	2835
Kapurthala	1140	815
Ludhiana	2514	1477
Mansa	915	738
Moga	781	598
Muktsar	546	445
Nawanshahr	746	615
Pathankot	467	381
Patiala	2127	1594
Rupnagar	348	211

Table 1
Data Extraction and
Sample Details

*Extraction Date
22 June 2016

judgments with less than 1000 characters, as these were usually orders. This process led to our final sample of 13,350 cases. We analysed these cases across metrics such as common drugs recovered, number of people involved, nature of police investigation and the extent of punishment. Details of the data extraction are given in Table 1 and the next section on Quantitative Data Analysis and Organisation.

Quantitative Data Analysis and Organisation

We used statistical software R version 3.3.0 to analyse data. The data extraction provided us with the following information about the accused:

1. Age
2. Time served as an under-trial
3. Bail information
4. Total sentence
5. FIR date and registration date
6. Type of drug
7. Quantity of drug

We then categorised drugs into pharmaceutical drugs and narcotic drugs as indicated in Table 2.

Table 2
Classification of
Pharmaceutical Drugs
and Narcotic Drugs

PHARMACEUTICAL DRUGS	NARCOTIC DRUGS
Alprazolam	Cannabis
Buprenorphine	Heroin
Codeine	Smack
Dextropropoxyphene	
Diphenoxylate	Opium
Methamphetamine	
Nitrazepam	Poppy Husk
	Pentazocine

We further classified drugs on the basis of the quantity recovered. This is relevant because under the NDPS Act, the quantity of drug recovered determines sentencing. The Schedule of the NDPS Act identifies two categories to determine sentencing—small quantity and commercial quantity. These two quantities theoretically distinguish between users and addicts on the one hand and traffickers on the other.

In the framework of the NDPS Act, intermediate quantity is recognised by the courts in cases where contravention involves a quantity lesser than commercial quantity but greater than small quantity. Thus, it is the gap between the categories of small quantity and commercial quantity that creates the third category of interme-

Table 3
Classification of
Drugs: Small Quantity,
Intermediate Quantity
and Commercial Quantity

DRUG	SMALL QUANTITY BELOW THIS VALUE, IN GRAMS)	INTERMEDIATE QUANTITY (BETWEEN THESE VALUES, IN GRAMS)	COMMERCIAL QUANTITY (ABOVE THIS VALUE, IN GRAMS)
Alprazolam	5	5<=100	100
Buprenorphine	1	1<=20	20
Cannabis (<i>charas</i>)	100	100<=1000	1000
Codeine	10	10<=1000	1000
Dextropropoxyphene	20	20<=500	500
Diphenoxylate	2	2<=50	50
Heroin	5	5<=250	250
Nitrazepam	20	20<=500	500
Opium	25	25<=2500	2500
Pentazocine	20	20<=500	500
Poppy Husk	1000	1000<=50000	50000
Smack	5	5<=250	250

Table 4
Ingredient Composition
of Pharmaceutical
Drugs: Tablets, Capsules
and Injections

Alprazolam

Alprax, Xanax

Codeine

Rexcof (syrup), Corex (syrup)

Dextropropoxyphene

Spasmo-Proxyvon, Parvon Spas, Dexovon, Promodex

Diphenoxylate

Lomotil, Microlite, Phenotil

Pentazocine

Fortwin

mediate quantity. By virtue of S.36A of the NDPS Act, Special Courts in Punjab only look at cases which involve recovery of drugs in intermediate and commercial quantities. Small quantity cases do not feature in our database, as they are adjudicated by Magistrates' Courts. Table 3 shows the classification of drugs into small, intermediate, and commercial quantities.

Drugs are measured in grams. In cases where drugs are found as intoxicant tablets, capsules and injections, we had to classify and quantify the drugs differently. Table 4 mentions some of the intoxicant tablets, capsules, liquid and injections containing active pharmaceutical drug ingredients. These drug ingredients have been noted in the Schedule of the NDPS Act.

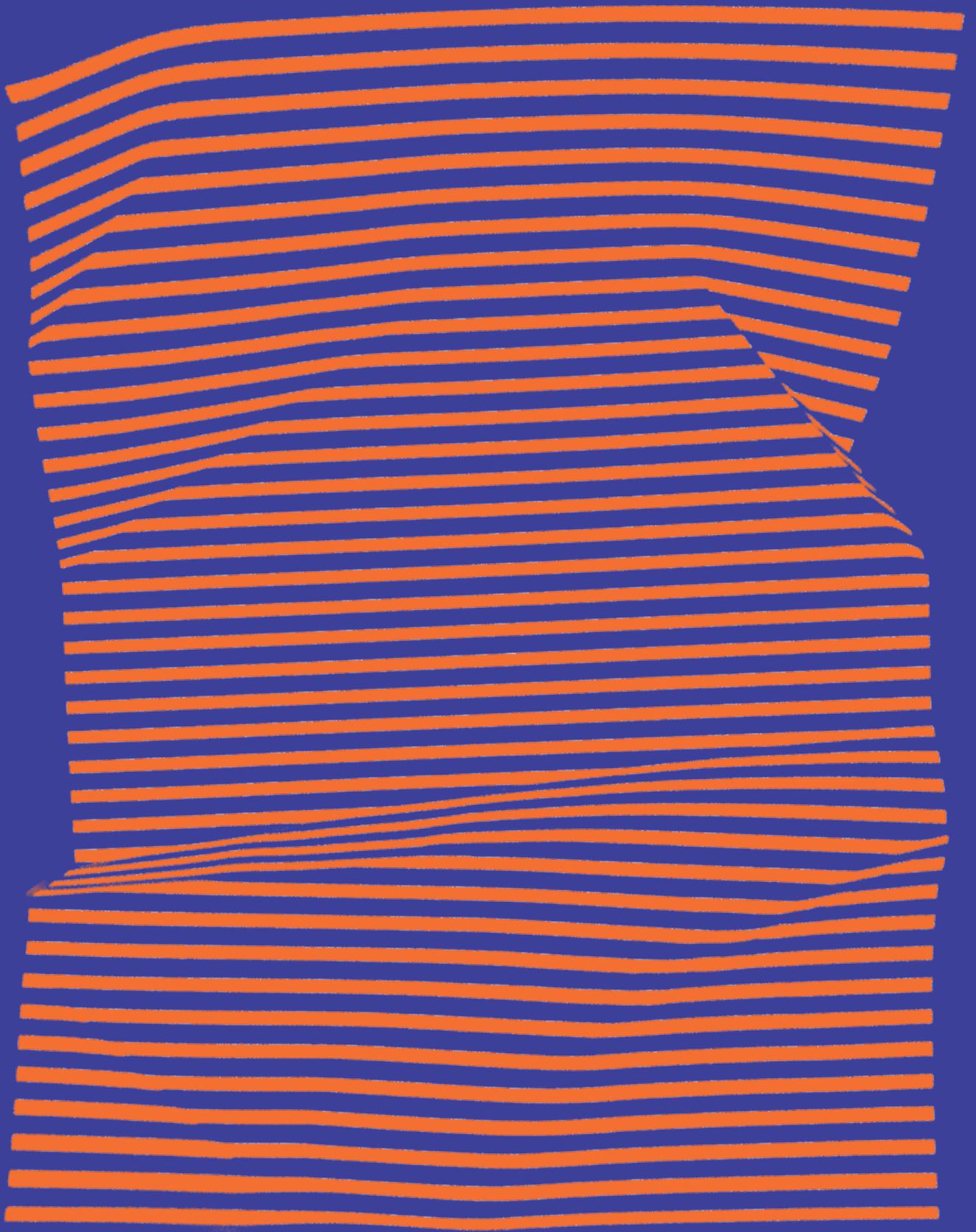
To determine quantity, we used the quantum of sentence given. For example, if the accused is sentenced to rigorous imprisonment of 10 years or above for the possession of tablets, then we classified the recovered substance as commercial quantity. Similarly, cases with sentences less than 10 years were categorised as intermediate quantity.

Qualitative Data and Analysis

We conducted field visits to Punjab in 2015 and 2016. A total of five visits were undertaken to one prison, several police stations, courts, hospitals and rehabilitation centres. We interviewed police officers, judges, public prosecutors, social workers and psychiatrists. Data collection has been supplemented by inputs from the Ministry of Health, Ministry of Social Justice and Welfare and the Department of Revenue, Ministry of Finance through interviews and RTI responses.

Information received from such visits and interactions has been combined with primary information received from RTI replies. RTI information was received from various de-addiction centres and civil hospitals in Punjab. The information pertained to details of patients addicted to specific drugs, number of beds, number of patients directed to de-addiction centres by courts, number of persons enrolled in Out-Patient Department (OPD) and In-Patient Department (IPD), and the total number of government treatment centres and private treatment facilities.

Through RTI applications, information was collated from the police, such as the Police Commissionerate in Amritsar. The data included case registration under the NDPS Act and information of drug recovery. Data was also retrieved from prison authorities across all Central Jails, District Jails and Sub-Jails in Punjab.



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PART I

BACKGROUND TO THE NDPS ACT

Part I provides a background to the NDPS Act. Three key aspects have been explored: the legislative developments leading to the NDPS Act, an analysis of its provisions, and an overview of Punjab's drug situation.

Legislative Development of the NDPS Act

The international movement to control the supply of drugs—popularly referred to as the ‘war on drugs’—gained traction in the backdrop of the Chinese opium crisis (1839–42). Delegations from various nations took a call on regulating licit drugs³ and prohibiting illegal smuggling of narcotics at the International Opium Commission in Shanghai in 1909.

Over the years, the international drug control regime, which consisted of several multilateral treaty laws, was streamlined into one single document: the 1961 Single Convention on Narcotic Drugs. Further, the 1971 Convention on Psychotropic Substances, and the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, expanded the international drug prohibition framework to the use of psychotropic substances and control of illicit trafficking of drugs, respectively.

Developments Leading to the Enactment of the NDPS Act, 1985

In India, drug laws at the national level, such as the Dangerous Drugs Act, 1930,⁴ were based on the international conventions ratified by the Government. India’s three drug laws, however, remained disaggregated and limited.⁵ Over the years, they were consolidated in line with India’s international obligations⁶ into the NDPS Act, which is centred on punishing traffickers and peddlers stringently, and adopting a softer approach towards individual consumers.⁷ The NDPS Bill, 1985 was introduced in the Lok Sabha on August 23, 1985 and was passed after four days of legislative debate. It received the President’s assent on 16 September, 1985 and came into force on 14 November, 1985.

Many MPs were critical of the Bill’s lenient provisions for addicts. VS Krishna Iyer (Janata Party) demanded deterrent punishment even for offences related to small quantities of drugs (S.27).⁸ On the same note, Shantaram Naik [Indian National Congress (INC)] insisted that compulsory punishment was the only method to effectively tackle drug addiction. Priya Ranjan Dasmunsi, also from the INC, said that minimal punishment for addicts would create a tradition of acceptance of drug use. He believed that for people to fear the law, drug addicts should be imprisoned for a minimum of two years.⁹

Janardhan Poojary, the Minister of State for Finance, allayed these fears, arguing that the law was not lenient towards anyone (including addicts), unless they could prove that the drug in their possession was for self-use.¹⁰ Other MPs (see Box 1) highlighted the following drawbacks of the Bill:

3. Licit drugs refer to drug substances which are acceptable under the law. Regulation of licit drugs would involve reasons such as medicinal purpose or research.
4. The Dangerous Drugs Act (1930) was a direct manifestation of India’s ratification of the Geneva Dangerous Drugs Convention, 1925.
5. The Opium Act (1857), the Opium Act (1878) and the Dangerous Drugs Act (1930).
6. India’s international obligations were in reference to three Conventions under the United Nations, namely the Single Convention on Narcotic Drugs, 1961 as amended by the 1972 Protocol, Convention on Psychotropic Substances, 1971, and United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.
7. Narcotics Control Bureau of India <<http://narcotics-india.nic.in/policy-strategy.php?id=1>> accessed on 14 October 2016.
8. S.27 of NDPS Act states that consumption of drugs is an offence and is punishable with imprisonment of up to one year (in case of some drugs) or six months (in case of all other drugs).
9. *Lok Sabha Debates on the NDPS Act, 1985* (Parliament Secretariat) 23 August 1985.
10. *Ibid.*

Box 1
Drawbacks Highlighted
by Specific MPs

Source
Lok Sabha Debates
on the NDPS Act, 1985
(Parliamentary Secretariat)
August 23, 1985.

- V.S. Krishna Iyer (Janata Party) argued for compulsory imprisonment even for those guilty of possessing small quantities of drugs.
- Ajay Mushran (INC) pointed out that not defining small quantities in the law could lead to misuse of the law.
- Two MPs, Balkavi Bairagi (INC) and Jujhar Singh (BJP), forcefully argued that the law would disproportionately impact farmers who grow opium. Bairagi stated that the economics of opium farming, coupled with government policy, ensured that farmers were forced to take illegal measures to survive. He pointed out that farmers were given leases to cultivate opium. They did so for 180 days between October and March. There was a compulsory levy, according to which the yield per hectare could not be below 28 kg.
- The maximum price paid per kg was ₹130 if the yield was below 30kg, and ₹220 if the yield was above 60 kg. But the farmers bore the brunt of corruption among public officials, right from having to bribe officials for the lease, to ensuring that they met the compulsory levy requirement.
- Several MPs, including Ajay Mushran (INC), raised concerns about the Bill's provisions on rehabilitating and treating drug addicts. They pointed out that there was no mandatory obligation on the government to establish treatment centres, and they criticised the lack of clarity about which Ministry was responsible for establishing de-addiction centres. They asserted that it was the government's duty to cure people of their addiction.

11. *Ibid.*

- a. no provision for treating children addicted to drugs;
- b. no provision for life imprisonment or death penalty for those found guilty of financing the Golden Crescent and Golden Triangle (drug trafficking routes);
- c. no provision to address the plight of farmers who grew opium in Madhya Pradesh;
- d. no penalty for corrupt public officials;
- e. no distinction between users of opium and those who deal in it; and the need to define the term “small quantity” in the Act itself.¹¹

The parliamentary debates exposed an essentially poor understanding of drug addiction amongst many of the MPs, which translated into an essential weakness in the Bill. First, the basic premise of the Bill—that deterrent penalty was needed to curb drug abuse—was never challenged. Second, the Bill failed to distinguish between a user, an addict, a peddler and a trafficker—it only defined an “addict” as someone who was dependent on drugs—basically treating all of them as criminals. A few MPs did voice this limitation during the debates,

but no one advocated for decriminalising users and addicts. While MPs raised many pertinent concerns about rehabilitating addicts, none of these concerns translated into any amendments to the Bill. Thus, the debates show that though some MPs understood the need for de-addiction and rehabilitation facilities, many overwhelmingly believed that high penalty was the only method to deter drug abuse.

Legislative Developments between 1985–1988

PITNDPS Act, 1988

The NDPS Act, 1985 was supplemented by the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (PITNDPS Act), which provided for preventive detention of persons involved in illicit traffic in narcotic drugs and psychotropic substances. Under this Act, drug traffickers could be detained for one to two years to prevent them from indulging in such illegal activities.¹² It was enacted on September 6, 1988.

NDPS (Amendment) Act, 1988

The NDPS Act underwent a major amendment in 1988. The amendment made drug-related offences non-bailable; and provided for the forfeiture of property related to drugs, mandatory death penalty for repeat offenders of certain crimes, and the creation of Special Courts.

The debates, once again, focused on the need for stringent penalties for drug traffickers. Several MPs such as G. Vijaya Rama Rao (Telugu Desam Party), Sudhir Roy (CPI), Ram Bhagat Paswan (INC) etc. expressed concern about the growing problem of drug trafficking, citing data on the volume of seized drugs and drug trafficking routes.¹³ The treatment and rehabilitation of addicts also attracted attention. In fact, Jayanti Patnaik (INC) urged the government to formulate an integrated prevention policy, with coordinated efforts between law enforcement and medical agencies.¹⁴ MPs in the Rajya Sabha like Kamal Morarka [JD (S)] and P.K. Kunjachen [CPI (M)] clearly stated that the Act was mostly being used to penalise addicts who needed to be treated as victims and rehabilitated.¹⁵

Unfortunately, these observations regarding addiction did not lead to any real change. In fact, Ajit Panja, Minister of State, Revenue Department, Ministry of Finance believed that S.39, which allowed a judge to decide whether a person should be sent for treatment, was sufficient to tackle addiction within the law.¹⁶

Legislative Developments Post-1988

In July 1994, an Expert Committee on Small Quantities under the NDPS Act, 1985 was constituted by the Ministry of Health on the request of the Department of Revenue to determine the scope of ‘small quantity’ drugs. The Committee submitted its report on March 24, 1995.¹⁷ The Committee observed that the primary fallout of the NDPS Act was that people caught with small amounts of drugs faced long prison sentences and hefty fines, unless they could prove that the drug was intended for personal use.

12. The PITNDPS Act, 1988.
13. *Lok Sabha Debates on the NDPS (Amendment) Bill, 1988* (Parliament Secretariat) 16 December 1988.
14. Jayanti Patnaik suggested a three-pronged strategy to tackle drug abuse (i) focusing on social, economic, political, medical and cultural factors that lead to the drug habit; (ii) a preventive approach by early detection of drug habit and socially devious behaviour through the community, family, police and voluntary agencies; (iii) programmes for detoxification, and rehabilitation of addicts.
15. *Rajya Sabha Debates on the NDPS (Amendment) Bill, 1988* (Parliament Secretariat), December 20, 1988.
16. Ibid.
17. Dr. JS Sapna, Dr. SK Gupta and Dr. S Saxena, Expert Committee on Small Quantities under the NDPS Act (Ministry of Health and Family Welfare, 24 March 1995).

18. Recommendations on Commercial Quantities of Narcotic Drugs and Psychotropic Substances (Department of Revenue, 20 September 2001) F.No.V/115/99-NCII, Signed by Ms. Mala Srivastava, Director (NC) [This document is available on file with the authors]
19. Annuradha KVIN 'The Narcotics Drugs and Psychotropic Substances Act, 1985' in M. Charles, K.S. Nair and Gabriel Britto (eds), *Drug Culture in India- A Street Ethnographic Study of Heroin Addiction in Bombay* (Rawat Publishers 1999) 302-308.
20. Annuradha KVIN, 'A Flawed Act' (2001), Seminar 504: 50-54.
21. Ibid.

The Committee recommended decriminalising the consumption of small quantities of drugs, since punishing drug addicts harshly was practically counter-productive. It recommended that to combat drug abuse, the focus should be on early detection, proper psychiatric treatment and comprehensive rehabilitation. The Committee pointed out that the reverse burden of proof under S.27 placed an unnecessary burden on the accused and led to abuse by enforcement authorities. It suggested that instead of punishing addicts, the law should provide for compulsory treatment by judicial order, and facilities for treatment and rehabilitation.

The report also looked into the issue of determining small quantities and concluded that the government should not determine "small quantity" for a wide range of drugs, since drug usage varies among individuals according to their level of addiction and financial ability, as well as the nature of drugs. The Committee did suggest a threshold for a few substances based on factors such as average dose consumed by users, average therapeutic dose, lethality, route of administration and traditionally used drugs.

Determining values for commercial quantity was the responsibility of the Department of Revenue, which constituted a Technical Committee to do so. The Committee submitted its report on August 23, 2001, and recommended that commercial quantity be fixed at 200-250 times the small quantity, except with highly potent drugs like LSD, where the minimum commercial quantity was kept at 1 gram. This was generally accepted by the Department of Revenue as the norm for the Schedule except for certain cases.

In response to the Technical Committee's suggestions, the Central Bureau of Narcotics recommended that commercial quantity for manufactured drugs like dextropropoxyphene, diphenoxylate etc. and psychotropic substances like buprenorphine, alprazolam, nitrazepam etc. should be reduced to 20-25 times the small quantity. Further, as per the Narcotics Control Bureau's suggestions, commercial quantity for opium was set at 2.5 kilograms; heroin and morphine at 250 grams; cocaine at 100 grams; and hash at 1 kilogram.¹⁸

In the meantime, a number of research studies highlighted the disproportionately high number of arrests of low-level drug users, and the lack of referrals of such cases for treatment by courts.¹⁹ Further, these studies found that due to judicial delays, many of those arrested on drug charges spent years in jail before their cases came up for hearing.²⁰ These criticisms led to a reassessment of the Act and additional amendments.

The NDPS (Amendment) Act, 2001

The NDPS (Amendment) Bill, 1998 was first introduced in the Rajya Sabha on July 9, 1998. The amendment was finally enacted in 2001 to address some of the weaknesses of the NDPS Act, especially the incarceration of poor drug addicts in jail for long periods of time due to delays in trials, weak bail provisions, and the failure of investigating agencies to follow procedural requirements.²¹

The purpose of the amendment was to rationalise the penalty structure to ensure that while those who trafficked in significant quantities of drugs received deterrent sentences, addicts and those who commit less serious offences received less severe punishment. The amendment categorised quantity of drugs into small, commercial and intermediate (quantity between small and commercial quantity), and awarded graded punishment accordingly. The amendment also removed the burden of proof on the accused from S.27.²²

While introducing the Bill, Yashwant Sinha, Minister of Finance in the NDA Government, said that under the pre-2001 law any person found with drugs, no matter what the quantity, had to be incarcerated for a minimum of 10 years. The amendment allowed for lesser punishment depending on the quantity the person was caught with.²³

The debate as a whole, however, displayed little change in the perspective of the MPs. Some of them, such as Priya Ranjan Dasmunsi (INC) and Raghuvansh Prasad Singh (Rashtriya Janata Dal), voiced concerns about lowering the penalty for those consuming or selling “small quantity” of drugs, especially if they were doing so in front of schools. They worried that reducing the penalty would set a bad example for law breakers and the NDPS Act would cease to be sufficiently deterrent.²⁴

Developments Leading to NDPS (Amendment) Act, 2014

In 2008, the Supreme Court passed a major judgment related to quantity of drugs. In *E Micheal Raj v. Intelligence Officer, Narcotics Control Bureau*,²⁵ the Court held that to determine sentences, the pure quantity of the drug must be considered. On November 18, 2009, however, the Department of Revenue issued a contrary Notification. It assigned punishment based on the weight of the whole drug, and not just the pure content.

Another major development was a Bombay High Court decision²⁶ on June 16, 2011, where the High Court read down the mandatory death penalty provided for by S.31A²⁷ of the Act. The death penalty applied in offences such as (a) engaging in the production, manufacture, possession, transportation, import-export of certain narcotic drugs or psychotropic substances and (b) direct or indirect financing of any of such activities.

Alongside these developments, palliative care groups raised concerns about access to essential pain medicines, such as morphine and other opiates for cancer patients. Although the Act allowed the medical use of narcotic drugs, strict penalties disincentivised hospitals and pharmacies from stocking them.²⁸

On September 8, 2011, the NDPS (Amendment) Bill, 2011²⁹ was introduced in the Lok Sabha after which it was referred to the Standing Committee on Finance on September 13, 2011.³⁰ The Committee presented its report on March 21, 2012. The Bill came up for debate in the Lok Sabha on February 20 and in the Rajya Sabha on February 21, 2014. The Bill came into force on March 10, 2014.

22. The NDPS (Amendment) Bill, 2001.
23. *Lok Sabha Debates on the NDPS (Amendment) Bill, 2001* (Parliament Secretariat) 7 March 2001.
24. Ibid.
25. *E. Micheal Raj v. Intelligence Officer, Narcotics Control Bureau*, [2008] 5 SCC 161 was a landmark case in Kerala, prior to the 2009 Notification. The defendant was convicted by the Special Courts, and the conviction upheld by the High Court, for carrying 4kg of heroin. The accused was punished for carrying commercial quantity of heroin and was awarded ten years of rigorous imprisonment along with a fine of one lakh rupees. In his appeal to the Supreme Court, the appellant contested his conviction, on the grounds that although the total quantity of heroin was 4.07kg, the purity of the substance was only 1.4% and 1.6% from the two samples. Hence, the quantity to be considered for awarding sentence should have been 60gms of heroin, falling under intermediate quantity, and not 4.07kg. The respondent challenged this with the argument that percentage content in the substance is irrelevant as none of the provisions in the Act suggest such an interpretation. The Act seeks to penalise entire substance viewed as a ‘narcotic drug’ and proceeds to penalise even preparations made from such a drug. Hence, it was argued that the contention determining the sentence based on mere pure quantity was insupportable in law. But the Court rejected the argument of the respondent, stating that the intention of legislature directed punishment towards those trafficking in the content of offending drug and not in any substance. In conclusion, the Supreme Court allowed the appeal, considering

the content of heroin to be 60gm and reduced the punishment.

26. *Indian Harm Reduction Network v. Union of India*, [2012] Bom CR(Cri) 121.
27. S.31A. of the NDPS Act reads as follows:
Death Penalty for certain offences after previous conviction
(1) Notwithstanding anything contained in S.31, if any person who has been convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, any of the offences punishable under [S.19, S.24, S.27A and for offences involving commercial quantity of any narcotic drug or psychotropic substance] relating to, – (a) Engaging in the production, manufacture, possession, transportation, import into India, export from India or transshipment, of the narcotic drugs or psychotropic substances (specified in Table of the original Section) (b) Financing, directly or indirectly, any of the activities specified in clause (a), shall be punishable with death.
28. Tripti Tandon, 'Drug Policy in India' (2015) Briefing Paper, International Drug Policy Consortium, February 2015.
29. The NDPS (Amendment) Bill, 2011.
30. Department of Revenue Standing Committee on Finance, *The Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 2011* (50th Report, Lok Sabha Secretariat, Parliament of India, March 2012) <<http://www.prsindia.org/uploads/media/Narcotic%20Drugs/SCR%20Narcotic%20Drugs%20and%20Psychotropic%20Substances%20Amendment%20Bill%202012.pdf>> accessed on 4 February 2016.

Key Features of the NDPS (Amendment) Act, 2011:

- The 2011 amendment pointedly clarified that the entire quantity of drug seized should be considered while determining punishment, and not just the pure drug content.
- It proposed adding the term 'management' after 'identification, treatment' etc. of addicts at government centres.
- In response to the concerns of palliative care groups, the Act introduced 'essential narcotic drug' under S.2 (viiiia), i.e. a narcotic drug notified by the Central Government for medical and scientific use. Drugs identified as 'essential narcotic drug' were made subject to Central Government rules under S.9(1)(a), which would permit and regulate their manufacture, possession, transport, purchase, consumption etc.

Concluding Remarks

The trajectory of the NDPS Act, 1985, traced through parliamentary debates and reports of various committees and commissions, highlights an overwhelming concern with deterrence and criminalisation, with intermittent focus on the treatment and rehabilitation of addicts. The debates in Parliament did not reveal a nuanced understanding of different dimensions of drug addiction and trafficking. They almost exclusively focused on deterrent punishments (including capital punishment for some offences) to tackle both trafficking and addiction. Even when legislators raised specific questions about the Act's efficacy, or the need for a coordinated rehabilitation strategy, the Government's responses were slow to address these concerns.

As a result, the NDPS Act treats anyone caught with drugs, whether for self-use or for sale, as a criminal. Conceptualising addiction within the ambit of criminalisation has had far reaching consequences on how addiction is handled in Punjab. Subsequent chapters in this Report will explain how the provisions of the NDPS Act have overwhelmingly targeted users and moved them away from de-addiction and treatment.

Overview of the NDPS Act

This chapter describes the existing framework of penalties and procedural safeguards in legislation, and the key bodies entrusted with enforcement duties.

Overview of Acts³¹

The NDPS Act, 1985 and the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (PITNDPS Act) both regulate drug trafficking, addiction and rehabilitation in India.³²

Overview

The Act seeks to control both the demand and supply of drugs by criminalising production, trafficking and use. It prohibits the manufacture, production, possession, consumption, sale, purchase, trade, use, import and export of narcotic drugs and psychotropic substances, except for medical or scientific purposes. It prohibits the cultivation of any coca plant, opium, poppy or any cannabis plant, except with a licence from the prescribed authority. The Act covers three broad classes of substances: (a) narcotic drugs like cannabis, opium etc., (b) psychotropic substances like codeine, dextropropoxyphene etc., and (c) “controlled substances” that are used to manufacture narcotic drugs or psychotropic substances, for example precursor chemicals such as acetic anhydride, ephedrine and pseudoephedrine.

Offences and Penalties

The Act grades punishment according to the quantity of drug—small, intermediate or commercial—with which the offender was caught. In addition, abetment, criminal conspiracy and attempts to commit an offence attract the same penalty as the offence itself. Preparation to commit an offence attracts half the penalty. Repeat offences attract one and half times the penalty and in some cases, the death penalty.

Key Provisions under the NDPS Act, 1985

Procedural Safeguards

Any person being searched has a right to be searched in the presence of a Gazetted Officer or a Magistrate (S.50). However, if the officer has reason to believe that it is not possible to take the person to a Gazetted Officer or a Magistrate without giving them a chance to part with the drug, controlled substance, etc., the officer can search the person, under S.100 of the Code of Criminal Procedure, 1973 (CrPC.) Under certain circumstances, searches can be made without a warrant or authorisation (S.42). In such cases, the officer has to send a copy of the information taken in writing, or the grounds of his belief, to the official who is immediately superior within 72 hours. The person who is arrested should be informed, as soon as may be, about the grounds

31. The NDPS Act, 1985 (with amendments); The PITNDPS Act, 1988.
32. This Report is limited to studying the NDPS Act only. The Report does not engage with the PITNDPS Act.
33. Central Bureau of Narcotics, India, ‘National Policy on NDPS’ <<http://www.cbn.nic.in/html/NationalPolicyEnglish.pdf>> accessed on 24 November 2016.

of that person's arrest [S.52 (1)]. The officer who arrests a person has to make a full report to his official superior within 48 hours (S.57).

Special Provision for Addicts

S.39 and S.64A provide immunity to addicts for consumption and offences involving small quantity of drugs, if they agree to undergo medical treatment for de-addiction. The immunity may be withdrawn if the addict does not undergo the complete treatment for de-addiction.

Treatment and Rehabilitation

S.71 empowers the Government to take any measure regarding identification, treatment, education, after-care, rehabilitation and social re-integration of addicts. It may establish, recognise or approve as many centres as it thinks fit for identification, treatment and management of addicts. The Ministry of Health and Family Welfare, and Health Departments of State Governments, are entrusted with the responsibility of providing treatment to addicts through government hospitals. Activities related to drug demand reduction have been assigned to the Ministry of Social Justice and Empowerment and State Social Welfare Departments.

SECTIONS

15
18
20
21
22

Production, manufacture, possession, sale, purchase, transport, inter-state import, inter-state export or use of narcotic drugs and psychotropic substances

39

Power of court to release certain offenders on probation

64A

Immunity from prosecution to addicts volunteering for treatment

EXPLANATION

Possession of small quantity: Rigorous imprisonment up to 6 months, or fine up to ₹10,000, or both.
Possession of intermediate quantity: Rigorous imprisonment up to 10 years and fine up to ₹1 lakh.
Possession of commercial quantity: Rigorous imprisonment of 10 to 20 years and fine of ₹1 to ₹2 lakhs.

Empowers the court to release any addict convicted for consumption of drugs or for possession of small quantities of drugs for treatment at a de-addiction centre established or recognised by the Government.

An addict found consuming drugs or possessing a small quantity of drugs can seek immunity under S.64A if he/she volunteers to undergo treatment at a de-addiction centre maintained or recognised by the Government.

Table 5
Offences and Penalties under Key Sections of the NDPS Act

Key Agencies for Law Enforcement³³

Narcotics Control Bureau (NCB), Ministry of Home Affairs

Constituted under the NDPS Act in 1986, the NCB is the apex coordinating body for the NDPS Act. It is responsible for prohibiting consumption of intoxicant drugs, except for medical purposes. It coordinates the actions of (a) concerned officers, State Governments and other authorities under the NDPS Act; and (b) the Ministry of Health and Family Welfare, the Ministry of Social Justice and other concerned Ministries in matters relating to drug abuse. The NCB seeks to implement India's obligations with respect to countering illicit traffic as under international conventions.³⁴

Central Bureau of Narcotics (CBN), Ministry of Finance

Set up as the Opium Department in 1950, it was renamed the CBN after the NDPS Act. The Narcotics Commissioner heads the CBN. Its key functions are: (a) supervising licit cultivation of opium poppy in India; (b) preventive and enforcement functions in poppy-growing states; (c) investigating cases under the NDPS Act and filing complaints in the court; (d) tracing and freezing illegally acquired property; (e) issuing licences for the manufacture of synthetic narcotic drugs; and (f) issuing export and import permits for various drugs.³⁵

Central Economic Intelligence Bureau (CEIB)

The CEIB coordinates at the international level with other customs, drugs and law enforcement agencies in the area of economic offences.³⁶ It strengthens intelligence-gathering activities and investigative initiatives in regard to enforcing economic laws.³⁷ The CEIB is responsible for identifying and destroying illicit opium and cannabis crops.³⁸

Other Bodies

Officers of the Directorate of Revenue Intelligence, Customs, Central Excise, Border Security Force, the Coast Guard and the police authorities of State Governments are also empowered to act against drug-related offences under the provisions of the NDPS Act, 1985.

34. Ibid.

35. Narcotics Control Bureau <<http://narcoticsindia.nic.in>> accessed on 1 September 2016; Central Bureau of Narcotics <<http://www.cbn.nic.in>> accessed on 1 September 2016.

36. Central Economic Intelligence Bureau <<http://www.ceib.nic.in/ceib.htm>> accessed on 23 March 2017.

37. Ibid.

38. Central Bureau of Narcotics, <<http://www.cbn.nic.in>> accessed on 1 September 2016.

Overview of Punjab's Drug Situation

39. Ministry of Home Affairs, *Census of India, 2011* <http://www.dataforall.org/dashboard/censusinfoindia_pca/> accessed on 15 November 2016.
40. Ibid.
41. Ibid. Male population (14,639,465) and Female (13,103,873) population.
42. 'Pushing Poppies in Punjab', (*The Economist*, 25 June 2016) <<http://www.economist.com/news/asia/21701163-states-drugs-problem-life-and-film-pushing-poppies-punjab>> accessed on 1 April 2016.
43. UNIDO, *Punjab Industrial Review* <https://www.unido.org/uploads/tx_templavoila/Punjab_industrial_review.pdf> accessed on 1 April 2016.

This chapter looks at the reasons for the evolution of the drug situation in Punjab, and recent trends and statistics that indicate the extent of drug abuse in the State. The chapter finds that a stagnating industrial sector and deteriorating per-capita GDP led to rising unemployment, which then led to rampant drug use. Punjab's economic crisis largely impacted the youth, as substance abuse became an escape from the lack of employment opportunities.

Demography of Punjab and the Evolution of the Drug Problem

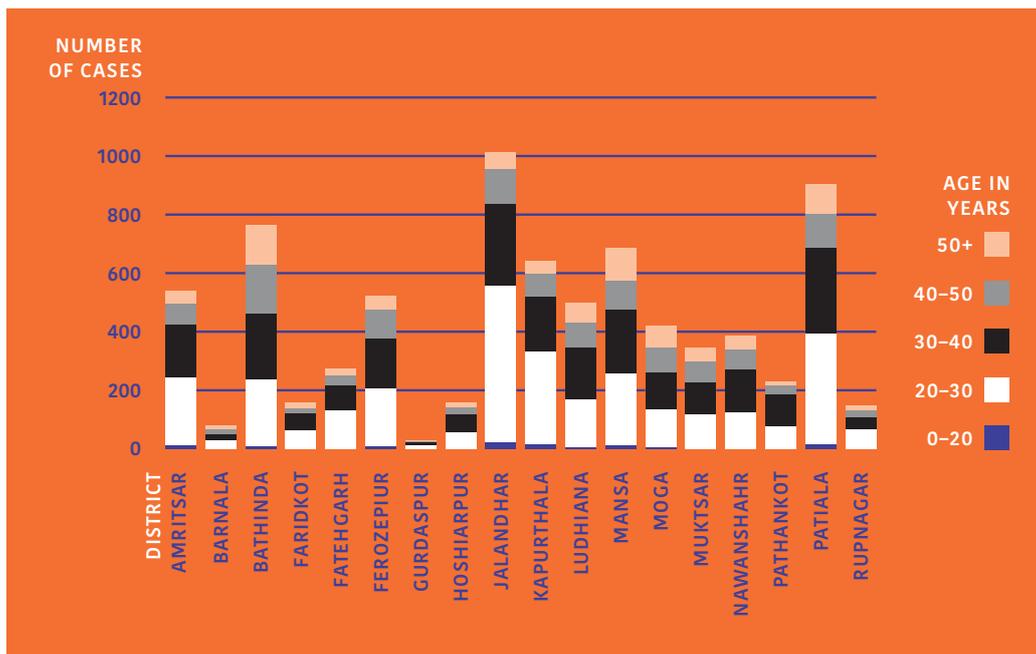
Situated in the north-western part of India, Punjab shares its borders with Pakistan and the Indian states of Jammu and Kashmir, Himachal Pradesh, Haryana, and Rajasthan. According to the 2011 Census of India, Punjab has a population of 2,77,43,338, constituting 2.30% of the country's total population.³⁹ 62.5%, or 1,73,44,192 people live in rural areas, and 37.4% or 1,03,99,146 live in urban areas.⁴⁰ The literacy rate in Punjab is 75.84%, with male literacy at 80.44% and female literacy at 70.73%.⁴¹

Traditionally known as the 'bread basket of India,' the economy of Punjab flourished in the agricultural boom of the 1960s. The Green Revolution led to tremendous advancement in Punjab's agro-based economy. The use of High-Yielding-Seeds (or HYV, i.e. High-Yielding-Varieties) yielded high levels of per capita income, leading to unprecedented affluence for the residents of Punjab. However, this growth was not sustainable. From the 1980s, negative consequences of the Green Revolution became apparent—mono-cropping (or the excessive focus on the cultivation of wheat and paddy), excessive use of pesticides, a falling water table and over-mechanised forms of farming.⁴² These were mere precursors for what was yet to come.

In later years, Punjab failed to capitalise on the economic reforms of the 1990s, leading to stagnation in its industrial sector. It neither augmented its administrative machinery enough to attract private investment in industry, nor provided incentives through institutional innovations.⁴³ This has led to rising unemployment among educated youth especially in rural areas. According to estimates based on National Sample Survey Organisation (68th round) data, educated rural youth constitute about 54% of the total rural unemployed population in the state. They normally own small land holdings, are reluctant to take up work that involves physical labour such as those provided through Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA), and are ill-equipped for salaried employment.

“There is no promise of good life or employment in the border districts. Border Development Programs have not worked effectively. Most of the drug peddlers along these border regions are farmers. Their mobility and ease of access enables them to be chosen as peddlers for package deliveries. [The farmers] get ₹50,000 for carrying a packet of 1kg of heroin. It is a one-time risk and a risk worth taking as the returns they have are worth three times what they can get in a produce over three years.”

Vinay Singh
 (Investigating Officer,
 Narcotics Control Bureau, Amritsar)



Graph 1
 Age-distribution of Punjab population (in years)

44. Jupinderjit Singh, How use turned to abuse in Punjab, 18 January 2015, The Tribune, <<http://www.tribuneindia.com/news/bathinda/how-use-turned-to-abuse-in-punjab/31353.html>> accessed on 1 April 2016; Himanshu, What is the real problem in Punjab, Live Mint, 15 June 2016, <<http://www.livemint.com/Opinion/iGSWbXh8wtajKupNSAss-CJ/What-is-the-real-problem-in-Punjab.html>> accessed on 1 April 2016.
45. Society for Promotion of Youth and Masses and National Drug Dependence Treatment Centre, AIIMS, Punjab Opioid Dependence Survey <[http://pbhealth.gov.in/scan0003%20\(2\).pdf](http://pbhealth.gov.in/scan0003%20(2).pdf)> accessed on 10 December 2016. The report states, "The profile of a typical drug addict is male, young, Punjabi-speaking and from a lower middle-class background. 83 percent are employed, 89 percent have attained some level of education and 99 percent live with families." Most addicts earn between ₹ 6,000-20,000 a month but need an average of ₹ 1,400 a day for drugs. The surplus money for daily drug use comes from drug peddling. Most addicts become small-time peddlers.
46. Rishika Baruah, 'Does Punjab have a Drug Problem: The Untold Story', *The Quint*, 16 June 2016 <<https://www.thequint.com/india/2016/06/16/why-does-punjab-have-a-drug-problem-the-untold-story>> accessed on 16 October 2016.
47. Ibid.
48. Debasish Basu & Ajit Avasthi, 'Strategy for the management of substance use disorders in the State of Punjab: Developing a structural model of state-level de-addiction services in the health sector (the 'Punjab model')' (2015), 57(1) *Indian Journal of Psychiatry* 9-20.

Punjab Economy and Drugs: Growing Addiction Among Youth

The economic scars of the agricultural crisis have had damaging repercussions. In fact, the 'drug menace' is said to be a direct outcome of the rise of unemployment, lack of non-farm job alternatives, and growing frustration among educated youth.⁴⁴ The failing farming sector has directed generations of family members to take to drug smuggling, as a viable alternative for employment and sustenance of drug addiction.⁴⁵

Drug smuggling has become routine, and this has particularly affected the youth. Our data reveals that 71.4% of all people coming to court in connection with NDPS offences in Punjab were between 20-40 years. Of these, 39.4% were people between the ages of 20-30 and 31.9% were between 30-40 years.

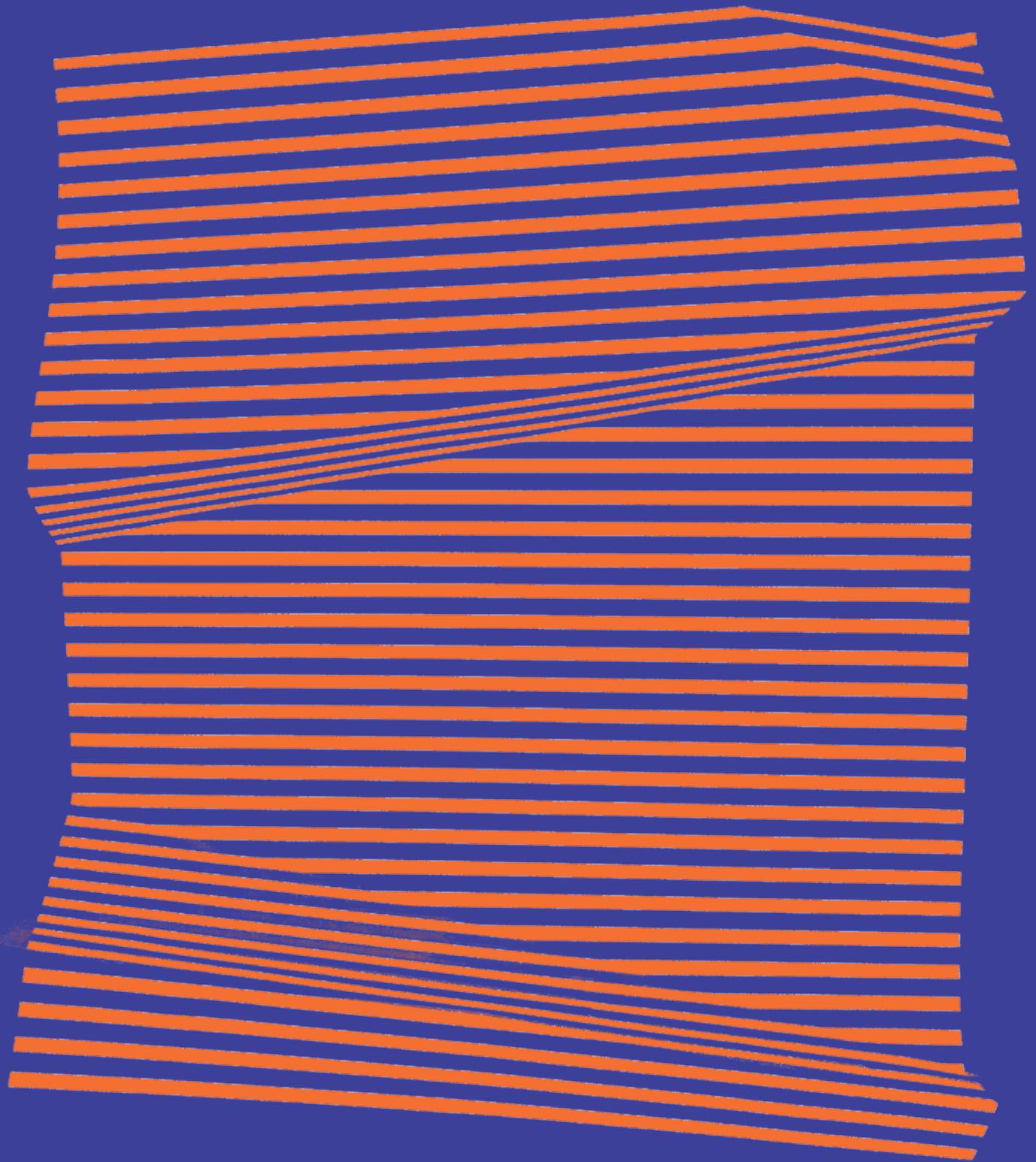
Profile of Drug Use

Opium and poppy husk have traditionally been consumed by farmers and farm workers in Punjab. Historically, the state received its opium supply from Rajasthan, and the Punjab Government sought to control this 'drug menace,' by shutting down illegal opium supply routes from Rajasthan.⁴⁶ Our data reflects that despite drug routes from Rajasthan being monitored, poppy husk continues to be the predominant drug of choice for people in Punjab. In 15 out of 18 districts sampled, the most number of cases coming to court were related to possession of poppy husk.

However, the clampdown on the Rajasthan route did create an opening in the drug market, which was subsequently filled with pharmaceutical drugs.⁴⁷ As Table 6 clearly depicts, pharmaceutical drugs have also become popular with residents in Punjab. Thus, Table 6 shows that the nature and type of drugs consumed in Punjab has changed over the years. As our findings show, however, overall addiction and use has continued unabated.⁴⁸

Table 6
Percentage of
Pharmaceutical Drug
Cases out of Total
Number of Cases

DISTRICT	PERCENTAGE OF CASES INVOLVING PHARMACEUTICAL DRUGS OUT OF TOTAL NUMBER OF CASES
Amritsar	71.8%
Gurdaspur	83.01%
Hoshiarpur	57.5%
Jalandhar	73.9%
Kapurthala	51.9%
Pathankot	81.9%



PART II DETERRENCE AND THE NDPS ACT

A key factor used to assess the effectiveness of any special legislation is the conviction rate it records. It is assumed that higher convictions will deter future criminal behaviour. As seen in the previous chapters, this assumption is central to the legislative debates surrounding the NDPS Act and all its subsequent amendments. As a result, the NDPS Act has strict liability provisions, also outlined above.

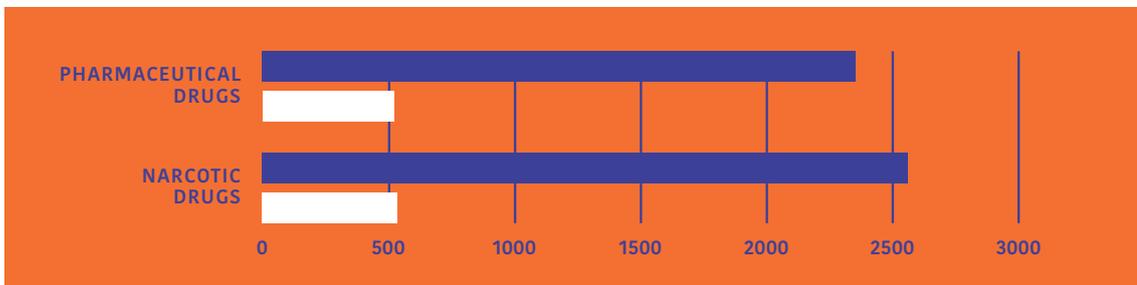
Part II of the Report looks at strict liability provisions in the NDPS Act and the resultant high rates of conviction. The subsequent chapters use data-driven observations from Punjab, which question the direct and often assumed link between high convictions, deterrence and reduced crime rate.

Deterrence and Strict Liability Provisions in the NDPS Act

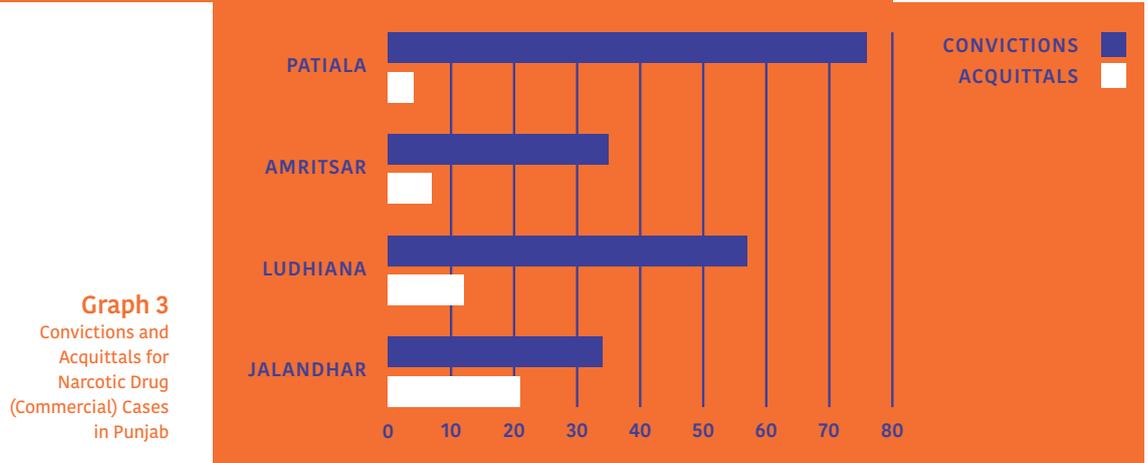
This chapter specifically evaluates whether high convictions recorded under the NDPS Act by virtue of strict liability provisions lead to the desired deterrence envisaged by the Act. The chapter will demonstrate that even as strict liability provisions ensure high conviction rate, they have substantially worsened police investigations in Punjab.

High Convictions and Deterrence under the NDPS Act

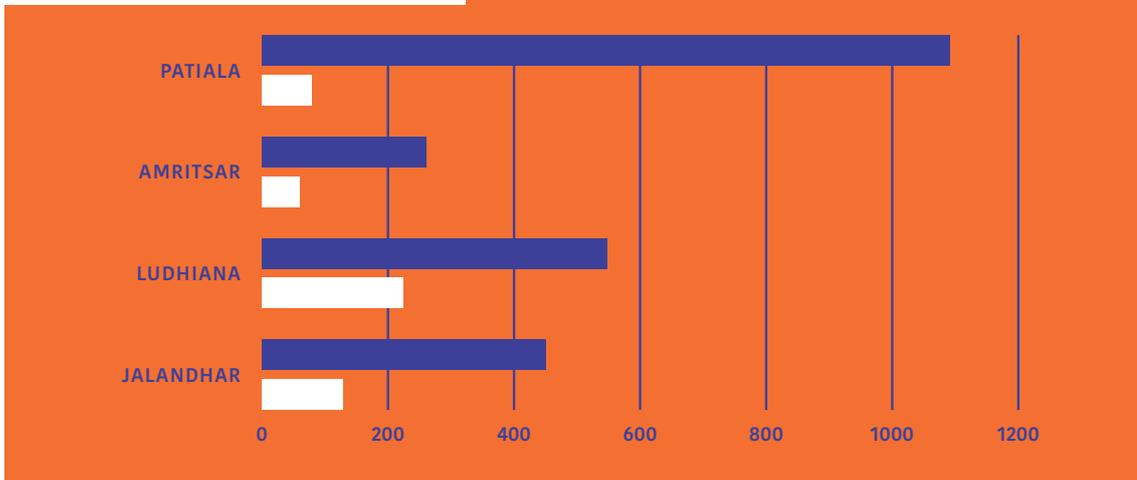
Data collected from four districts of Punjab, Amritsar, Jalandhar, Ludhiana and Patiala, depict conviction and acquittal rates under the NDPS Act between 2013 and 2015, as illustrated in Graphs 2, 3, and 4.



Graph 2
Convictions and Acquittals



Graph 3
Convictions and Acquittals for Narcotic Drug (Commercial) Cases in Punjab



Graph 4
Convictions and Acquittals for Narcotic Drug (Intermediate) Cases in Punjab

49. The data should not be interpreted as a comparison between the different legislations, since the ingredients of offences vary. The table only facilitates comparison of cases for the purpose of examining the ratio of conviction to acquittals in each legislation.

50. For detailed information on individual districts, see Appendix.

These graphs demonstrate high rates of convictions and low rates of acquittals under the NDPS Act in the four districts mentioned above. In fact, in Patiala in 2015, the NDPS Act recorded the highest number of convictions among all cases coming to the Sessions Court that year.⁴⁹

Finally, high conviction trends can also be inferred from prison populations across Punjab,⁵⁰ as demonstrated in Table 8. Table 8 shows that offenders convicted under the NDPS Act alone constitute a significant number of prison inmates in Punjab, compared to the total number of prisoners for all other offences combined. Based on Graphs 2–4 and Tables 7–8, it is clear that the NDPS Act has resulted in high conviction rates for drug offences in Punjab.

Table 7
Cases under Sessions Court—Year 2015, Patiala

Source
Prosecutor's Office, Patiala,
for the year 2015

NAME	TOTAL	CONVICTION	ACQUITTAL	CONVICTIONS (IN %)
THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985	765	694	71	90.7
THE INDIAN PENAL CODE, 1860	1,660	513	1,147	30.9
THE ARMS ACT, 1959	28	19	9	67.8
THE CENTRAL EXCISE ACT, 1944	292	230	62	78.76
S.7 OF THE ESSENTIAL COMMODITIES ACT, 1955	3	0	3	0
THE PREVENTION OF CORRUPTION ACT, 1988	6	2	4	33.34
THE PUBLIC GAMBLING ACT, 1867	182	165	17	90.65
THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956	9	0	9	0
THE INDIAN COPYRIGHT ACT, 1957	30	10	20	33.34

Table 8
Prison data

Source
Additional Director
General of Police (Jails)
Punjab, Chandigarh, as
on 31-12-2015

	CENTRAL JAILS	DISTRICT JAILS	SUB-JAILS
TOTAL AUTHORISED INTAKE CAPACITY	14,333	3,508	788
TOTAL NUMBER OF PRISONERS	17,762	4,815	944
TOTAL NUMBER OF PRISONERS (OTHER CRIMES COMBINED)	5,140	1,371	197
TOTAL NUMBER OF PRISONERS (NDPS ACT)	3,469	1,058	81
TOTAL NUMBER OF UNDERTRIALS (OTHER CRIMES COMBINED)	5,081	1,119	463
TOTAL NUMBER OF UNDERTRIALS (NDPS ACT)	3,936	1,218	194

As discussed earlier in the section on legislative developments, MPs believed deterrent punishment to be an appropriate response to drug-related offences. Deterrent punishment was ensured by mandatory minimum sentences of ten years for possession of commercial quantity of drugs. In addition, assuredness of conviction was ensured by strict liability provisions. The next section explores strict liability provisions under the NDPS Act and their impact on police investigation in Punjab.

Strict Liability Provisions in the NDPS Act

Strict liability provisions do not consider *mens rea* (the intention of causing harm or wrong-doing) and rely solely on the *actus reus* (the criminal act) to convict for an offence. Since intent is harder to prove than a criminal act alone, strict liability provisions ensure higher convictions. As they lead to a higher rate of conviction, provisions of strict liability are largely viewed as deterrent. Under the NDPS Act, S.35⁵¹ establishes the ‘presumption of culpable mental state.’ This provision means that the mental state required to commit an offence is assumed by the court. The burden of proof is placed on the accused to prove that such mental state did not exist while committing the offending act. Similarly, S.54⁵² does away with the requirement of *mens rea* for committing an offence. Under it, mere possession of any narcotic or psychotropic substance is sufficient to constitute an offence.

This reverse burden of proof has been contested in several Supreme Court cases. A 2011 verdict⁵³ held that ‘conscious (the knowledge of) possession’ had to initially be proved by the prosecution beyond reasonable doubt; only after which could presumptions under S.35 arise. By 2015, several judgments⁵⁴ instead held that the prosecution had to prove only ‘possession’ and not ‘conscious possession’. Once possession was proved beyond reasonable doubt, the burden shifted on the defendant to rebut conscious possession or establish that there was no knowledge of the same.⁵⁵ S.35 and S.54 apply uniformly across all kinds of drug cases, irrespective of small, intermediate and commercial quantity.

By focussing on possession alone, the Act fails to distinguish between different kinds of crimes (drug consumption, unauthorised possession, peddling, transportation, and trafficking etc.) and offenders (first time offenders, individual users, drug addicts and trafficking units). Further, the law does not require enforcement agencies to establish ‘motive’ or ‘intent’ behind said possession. This has led to police adopting a template-based narrative across districts, kinds and quantities of drugs.

Impact of Strict Liability on Police Investigation

In our analysis, we found that police narratives in charge-sheets were so similar that they seemed to follow a template narrative. The template narrative found in chargesheets broadly reads as follows.

51. S.35 of the NDPS Act, 1985 reads as follows: “Presumption of culpable mental state. -(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. Explanation. -In this section “culpable mental state” includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact. (2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.”

52. S.54 of the NDPS Act, 1985 reads as follows: “Presumption from possession of illicit articles. -In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of (a) any narcotic drug or psychotropic substance or controlled substance; (b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated; (c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or (d) any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or

psychotropic substance or controlled substance has been manufactured, for the possession of which he fails to account satisfactorily.”

- 53. *Bhola Singh v. State of Punjab*, (2011) 11 SCC 653.
- 54. *Gian Chand v. State of Haryana*, (2013) 14 SCC 420; *Baldev Singh v State of Haryana*, (2015) 43 SCD 105.
- 55. *Ibid.*
- 56. For detailed information, see Appendix.

The individual (or suspect) is found looking suspicious during patrol and is apprehended by the police as s/he tries to run away. Drugs are found in a polythene bag or handbag, which is searched once the suspect reposes faith/confidence in the investigating officer. Upon search, drugs are recovered—the substance is then prepared as sample parcels for chemical examination. A *prima facie* charge is registered under the appropriate Section of the NDPS Act.

We found variations of this entire complete narrative in nearly all the judgments we read. Additionally, we traced this duplication of narratives by searching for certain common phrases used in police narratives⁵⁶ across our dataset, outlined in Table 9a.

Out of our dataset of 13,350 NDPS cases across Punjab, police narratives use a combination of Pn1 to Pn10 in 10,959 cases. Table 9b demonstrates the most commonly occurring strings of phrases in police narratives across Punjab.

SHORT-FORM USAGE	PHRASE COMMONLY USED
Pn1	‘in connection with’ patrolling duty
Pn2	Said person was found/apprehended ‘while carrying a plastic bag’
Pn3	‘on seeing the police party’, the accused tried to run away etc.
Pn4	nabbed ‘on the basis of suspicion’
Pn5	‘suspected some intoxicant substance’
Pn6	‘reposed confidence’ in the Investigating Officer
Pn7	‘reposed faith’ in the Investigating Officer
Pn8	Intoxicant substance/drug recovered in a ‘polythene envelope’
Pn9	‘on the basis of suspicion’, the police apprehended the accused
Pn10	‘secret information’—of accused selling/carrying drug substance. In case a raid is conducted, accused can be caught with large quantities of contraband.

Table 9a
Strings of Phrases in
Police Narratives

POLICE NARRATIVE COMBINATION (HIGHEST OCCURRING STRINGS)	NUMBER OF CASES (WHERE COMMON STRINGS OCCUR)
Pn1, Pn3, Pn6	1,154
Pn1, Pn3	935
Pn1, Pn3, Pn6, Pn9	604
Pn1	564
Pn3	532
Total	3,789

Table 9b
Police Narratives and Most Commonly Occurring Strings of Phrases

As can be seen, Pn1, Pn3, Pn6 and Pn9 are used in the maximum number of cases. To elaborate, 3,789 cases describe the investigation in more or less an identical manner—wherein the police party was on patrol duty and came across a suspicious looking person. The suspect, on seeing the police party tries to run away and thereafter reposes confidence to be searched by the investigating officer.

The template narrative in charge-sheets, strikingly, was observed throughout districts in Punjab. This is best demonstrated through examples from Kapurthala and Mansa (see Box 2), where the standard template remained unaffected by the geographical distance between the two districts and the difference in quantity of drug recovered (commercial or intermediate quantity).

The uncanny repetition in police narratives demonstrates the superficial nature of police investigations under the NDPS Act in Punjab. The legal framework of the NDPS Act, which incorporates strict liability provisions to ensure high convictions, seems to in effect disincentivise the police from accounting for different circumstances across individual cases. Because the NDPS Act does not require intent to assign criminal culpability, the law in practice ends up calling only for minimal investigation to prove possession. No effort is made to investigate the actual source of the drug or the reasons behind possession of the drug. This hinders a long-term resolution of Punjab’s drug problem. The next section delves into the question of ‘who’, that is, which category of offenders is being convicted under the Act.

57. *State v. Manohar Lal*, Decided on 10.09.2013, In the Court of Mandeep Pannu, Judge, Special Court, Mansa, Case number 117.
58. *State v. Lakhwinder Singh alias Lakhu*, Decided on 26.05.2015, In the Court of Jasvir Singh Kang, Judge, Special Court, Kapurthala, Case number 5662.

District: Mansa

in *State v. Manohar Lal*⁵⁷

Police officials were going from village Deluana to village Nangal Kalan, in connection with patrolling duty. When police party reached near canal minor of village Nangal Kalan, a person was seen coming from northern side, holding a bag in his hand. On seeing the police party, he tried to turn back but was apprehended by the ASI. The ASI said that he suspects some contraband in the bag held by him. Search of the bag is to be conducted. ASI apprised him of his legal right of being searched to be conducted before a Gazetted Officer or Magistrate. The accused reposed faith in the officer. His consent memo was prepared. Opium was recovered from the wrapped polythene paper. Out of the recovered opium, 10 grams was separated as sample and made into a parcel.

District: Kapurthala

in *State v. Lakhwinder Singh alias Lakhu*⁵⁸

ASI Inderpal Singh along with other police officials were on patrolling duty in connection with checking of bad character persons. One Sikh gentleman was seen to be coming, carrying in his right hand glazed paper. On seeing the police party, he tried to turn to his right side under suspicious circumstances. ASI, on the basis of suspicion, intercepted him with the help of other team members. The accused was inquired regarding his whereabouts. Then, Investigating Officer informed the accused of his suspicion regarding some intoxicant substance contained in the glazed paper carry bag. Accused was further informed that he had a legal right to get searched by some Gazetted officer or Magistrate. The accused reposed confidence upon the Investigating Officer.

Box 2
Standard Template
Examples from Mansa
and Kapurthala

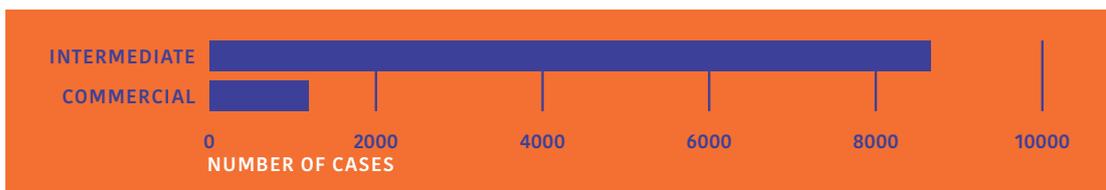
NDPS Act and Intermediate Quantity Cases

This chapter looks at how, even as the NDPS Act records high convictions, it is largely people caught with intermediate quantity of drugs that are being convicted under the Act in Punjab. It takes a closer look at sentencing in intermediate quantity cases involving narcotic drugs. The chapter then establishes that the nature of sentences is such that they serve neither the purpose of deterrence nor rehabilitation that the Act set out to do.

59. The Schedule for Small and Commercial Quantity, The Narcotic Drugs and Psychotropic Substances Act, 1985 <<http://www.cbn.nic.in/html/qtynotif.PDF>> accessed on 12 December 2016.

Dilemma of Drug Classification—the Schedule of the NDPS Act

As discussed earlier, parliamentary debates around the NDPS Act distinguished between drug users and traffickers. This distinction was incorporated in the NDPS Act in 2001 by basing punishment on the quantity of drug recovered: small, intermediate, or commercial.⁵⁹ However, in this binary discourse of ‘user’ versus ‘trafficker’, a large number of cases in Punjab—that of intermediate quantity—are left out. The category of intermediate quantity does not feature in the Schedule of the NDPS Act, but is negatively defined as the range between small quantity and commercial quantity. Intermediate quantity encompasses a wide range. For example, for heroin, it is between 5 and 250 grams; for poppy husk, between 1kg and 50 kg; for opium, between 25 grams and 2.5 kg; and for dextropropoxyphene, between 20 and 500 grams. As Graph 5 depicts, most cases in Punjab under the NDPS Act involve intermediate quantity of drugs.



Graph 5
Occurrence of Cases in Punjab: Classification based on the Schedule (NDPS Act) 2013–15

On average, 85.4% of cases under the NDPS Act across the 18 sampled districts between 2013–15 involve intermediate quantities of drugs. In comparison, only 14.57% of all cases coming to court involve commercial quantity of drugs. This means that intermediate quantity cases are more than 5 times the number of commercial quantity cases. Intermediate quantity cases range from being 15 times the number of commercial quantity cases in Bathinda to 2.2 times in Gurdaspur. Table 10 gives a district-wise division of intermediate quantity and commercial quantity cases.

In practice, the NDPS Act is paying inordinate attention to cases involving intermediate quantity of drugs. While the Act has proposed severe punishments for drug traffickers, and called for a ‘reformatory

Table 10
Percentage of Cases
under Intermediate
Quantity and
Commercial Quantity

DISTRICT	PERCENTAGE OF CASES UNDER INTERMEDIATE QUANTITY	PERCENTAGE OF CASES UNDER COMMERCIAL QUANTITY
Amritsar	84.17%	15.82%
Barnala	86.86%	13.13%
Bathinda	93.7%	6.22%
Faridkot	89.37%	10.62%
Fatehgarh-Sahib	76.12%	23.87%
Ferozepur	86.44%	13.55%
Gurdaspur	69.2%	30.76%
Hoshiarpur	85.84%	14.15%
Jalandhar	77.08%	22.91%
Kapurthala	87.20%	12.79%
Ludhiana	89%	10.99%
Mansa	86.6%	13.37%
Moga	90.43%	9.56%
Muktsar	87.1%	12.89%
Nawanshahr	92.01%	7.98%
Pathankot	81.1%	18.8%
Patiala	85.6%	14.39%
Rupnagar	89.5%	10.49%

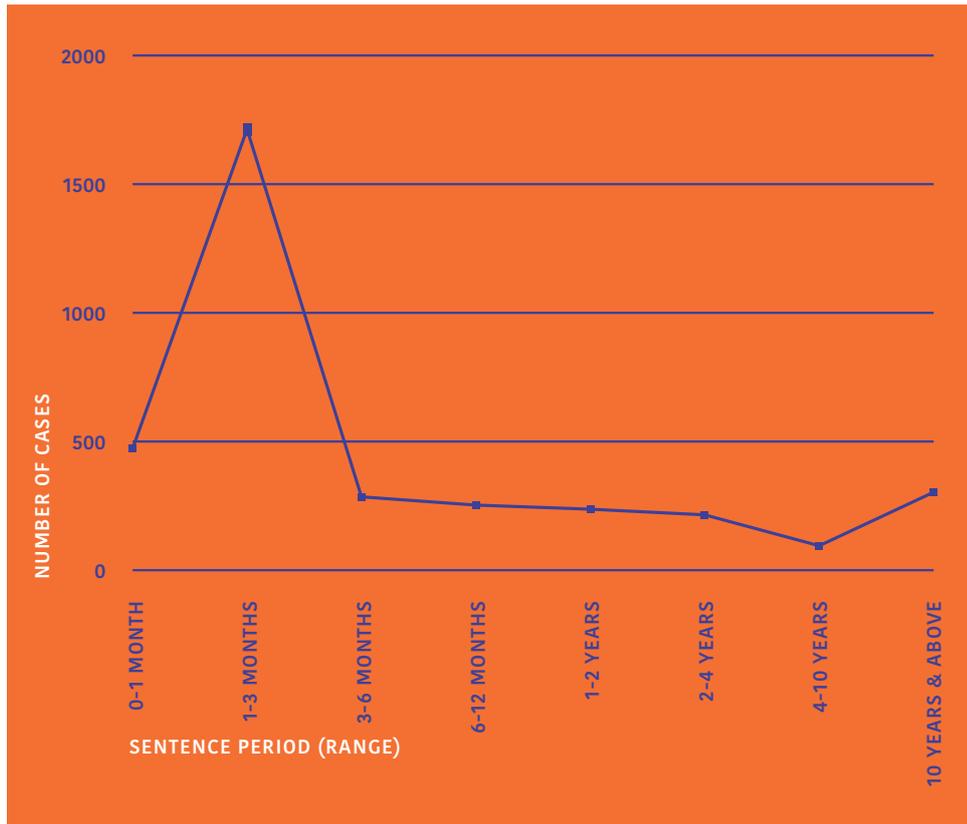
60. 'Objectives and Reasons' accompanying the 2001 amendment, NDPS Act.

approach towards addicts,⁶⁰ the law as a whole has remained silent on its intent with respect to offenders caught with intermediate quantities of drugs. This is because drug classification under the NDPS Act was poorly conceptualised. As previously mentioned, by accounting only for small and commercial quantities of drugs in the Schedule, the Act left out a large number of cases that did not fall within either of these categories. This has led to ambiguous sentencing practices, which are evaluated below.

Sentencing Patterns for Intermediate Quantity Cases

Minimal Sentences and 'Time Served'

As previously discussed, despite the Act recording a high conviction rate, a sizeable proportion of such cases involve intermediate quantities of drugs. Further, in most cases involving intermediate quantity of drugs, only minimal sentences were given. Across all sampled districts in Punjab, the average sentence period for cases with narcotic drugs is 1–3 months. This sentencing pattern remains consistent across all kinds of narcotic drugs, as demonstrated in Graph 6 and Table 11.



Graph 6
Average Sentences
for Narcotic Drug
Cases in Punjab

DISTRICT	NUMBER OF CASES BY TIME SPAN (GIVEN BELOW IN MONTHS)							
	0-1	1-3	3-6	6-12	12-24	24-48	48-120	120+
Amritsar	42	84	14	13	12	21	5	29
Barnala	7	3	0	0	2	4	3	1
Bathinda	193	172	9	6	7	10	8	15
Faridkot	0	25	5	3	1	3	0	2
Fatehgarh	1	7	9	24	35	16	0	15
Hoshiarpur	10	110	17	18	10	7	3	9
Jalandhar	64	90	31	26	12	4	2	26
Kapurthala	0	7	2	5	4	3	2	21
Ludhiana	63	186	26	28	30	30	12	42
Mansa	7	200	55	44	35	16	1	24
Moga	1	142	6	7	21	34	10	26
Muktsar	0	8	2	3	1	14	8	5
Nawanshahr	14	195	23	12	7	5	16	34
Pathankot	2	27	1	1	1	6	3	4
Patiala	62	421	64	55	55	37	22	48
Rupnagar	7	36	21	8	4	4	0	2
Total	473	1713	285	253	237	215	95	303

Table 11
Sentencing
Patterns for
Narcotic Drug
Cases—Data
across Districts

A significant number of drug-related offences are being sentenced to time already served in jail as an under-trial. This is normally the time an accused spends in jail before s/he is released on bail. While ‘time served’ adds to the total number of convictions under the Act, they do not translate into a post-conviction jail term. If the law intends to deter people found with intermediate quantity of drugs, minimal sentences such as these would fail to achieve that purpose. If the law intends to rehabilitate addicts, then addicts caught with intermediate drug quantities are being denied help by being sent into the criminal justice system (as discussed in the next section). Due to the lack of clarity in its conceptualisation, intermediate quantity as a category has failed to serve either of the Act’s twin purposes.

Sentencing Addicts in the Criminal Justice System

The Act reserves the heaviest sentences for commercial quantity of drugs, assuming that such quantities are meant for sale and trafficking. The fact that courts are largely sentencing people for 1–3 months of imprisonment in intermediate quantity cases makes it evident that these are treated like cases of addiction and not trafficking. Tables 12a and 12b show the total number of convictions in Patiala for intermediate quantity of smack (5–250 grams) and poppy husk (1–50 kg). They tabulate (a) range of drug quantity, and (b) average sentencing period.

Table 12a
Total Cases for Smack-related Offences in Intermediate Quantity, Patiala (2013–15)

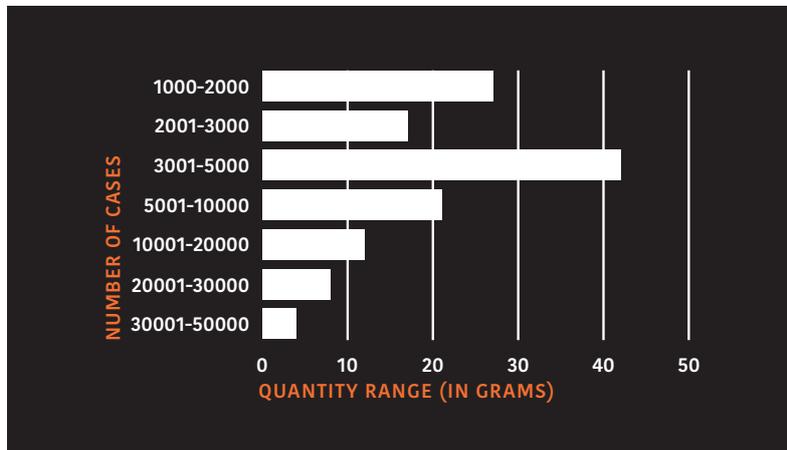
DRUG QUANTITY (IN GRAMS)	AVERAGE SENTENCE (IN MONTHS)	TOTAL NUMBER OF CASES
5–10	1.8	215
11–20	2.4	124
21–50	5.7	97
51–100	10	19
101–250	37	12

Table 12b
Total Cases for Poppy-Husk-related Offences in Intermediate Quantity, Patiala (2013–15)

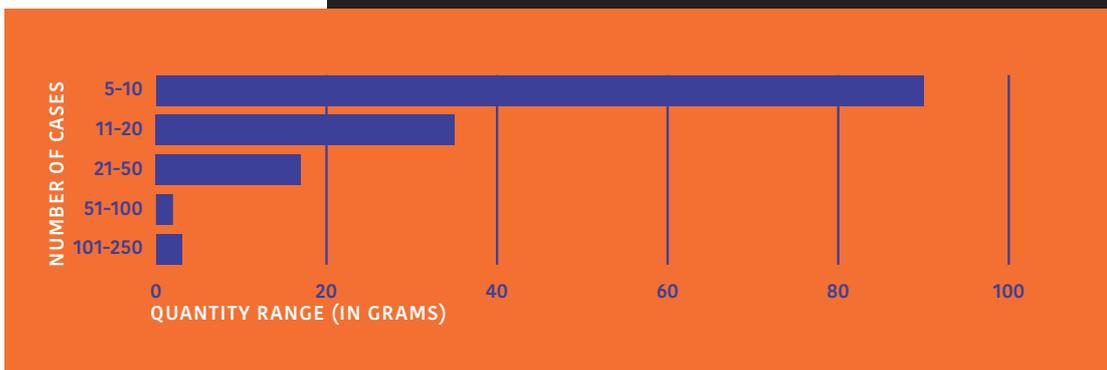
DRUG QUANTITY (IN GRAMS)	AVERAGE SENTENCE (IN MONTHS)	TOTAL NUMBER OF CASES
1,000–2,000	1.2	11
2,001–3,000	1.9	15
3,001–5,000	1.4	93
5,001–10,000	1.5	188
10,001–20,000	4.4	177
20,001–30,000	21.4	34
30,001–40,000	49	21
40,001–50,000	60.8	3
50,001 & above	111.1	43

Out of a total of 468 cases involving smack, the highest number of smack-related offences (215) fall within the range of 5-10 grams. This number reduces as we move higher in the range of drug quantity, as indicated by Table 12a. When it comes to average period of sentencing, most of these cases (339 out of 469) have been sentenced to a period ranging between 1.8 to 2.4 months.

Similarly, the highest number of cases for poppy husk fall under the category of 5 kg to 10 kg (188), followed by 10-20 kg (177). Further, most cases (458 out of 585 cases) have been sentenced to imprisonment for 1.4 to 4.4 months. Graphs 8 and 9 demonstrate this trend in two other districts, Kapurthala and Ludhiana, for poppy-husk and smack-related offences respectively. The graphs show that even within intermediate quantity cases, a significant number of cases are closer to the range of small quantity.



Graph 7
Number of Cases,
Kapurthala (Poppy Husk)



Graph 8
Number of Cases,
Ludhiana (Smack)

61. *State v. Mohinder Singh*, Decided on 5.11.2014, In the Court of Arunvir Vashista, Special Court, Jalandhar, Case number 144.
62. *State v. Charanjit Singh @ Chintu & Ors.*, Decided on 8.10.2013, In the Court of Lalit Kumar Singla, Special Court, Kapurthala, Case number 2323.

Under the Act, individuals found with small quantities of drugs can be diverted to de-addiction centres instead of prisons. The law presumes that such offenders are carrying the drugs for self-use and not for trafficking, and hence can be rehabilitated. Our data, however, suggests that many cases involving intermediate quantity of drugs could also be cases of addiction and not trafficking, which are erroneously finding themselves in the criminal justice system.

Often judges themselves acknowledge that offenders found with intermediate quantities are addicts. In a Special Court judgment from Jalandhar, *State v. Mohinder Singh*,⁶¹ the Judge remarked that the accused, found in possession of 10 grams of heroin, was an 'addict'. The accused was sentenced to time already served as an under-trial, 38 days. The judge in *Mohinder Singh* clearly pointed out the negative impact of imprisonment on the accused and his family, and stated that the period undergone was 'sufficient to meet the ends of justice'. Similarly, in Kapurthala, in *State v. Charanjit Singh @ Chintu & Ors.*,⁶² the police apprehended three persons for possessing 5 grams of 'intoxicant powder,' which is again an intermediate quantity. The Court sentenced all three people to time served as under-trials. The judge stated that the three accused men had fallen in the 'bad company of youth' and taken to 'bad vices and drugs'. Thus, a lenient sentence was reasoned, to 'forgive the accused men on grounds of their addiction'.

But even when judges acknowledge addiction and hand out minimal sentences, the accused are still addressed within the criminal justice system instead of de-addiction centres. The law provides no discretion for judges to transfer individuals caught with intermediate quantity of drugs to such centres. These minimal sentences neither meet the objective of deterrence, nor do they help prevent drug addiction. This makes evident a major flaw in the Act, viz., the poorly conceptualised category of intermediate quantity.

The next chapter analyses commercial quantity cases in Punjab. The NDPS Act makes a distinction between drug users and traffickers, in that it assumes that offenders caught with commercial quantity of drugs are traffickers. Based on the assumption, the law calls for deterrent punishment and reserves harsh penalties for such cases of drug trafficking. The next chapter will investigate whether this assumption of equating commercial quantity cases to drug trafficking offences is valid in the context of Punjab.

NDPS Act and Commercial Quantity Cases

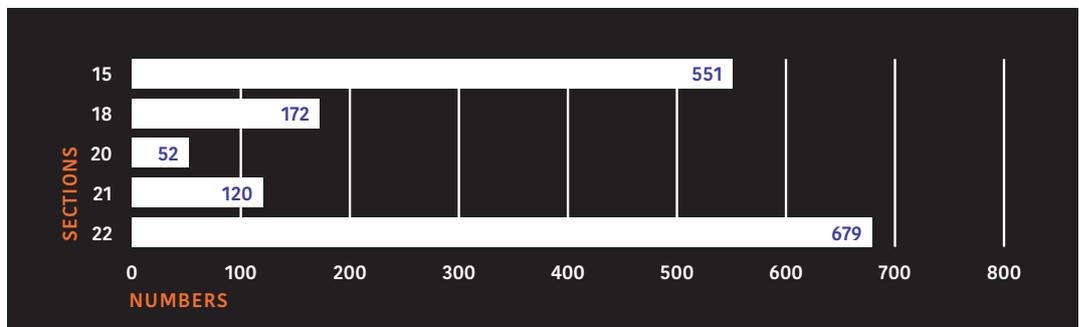
The previous chapter examined intermediate quantity cases, especially in the context of narcotic drugs. The chapter concluded that minimal sentences awarded to cases are failing to achieve deterrence and rehabilitation, as most of the cases entering the criminal justice system involve drug addicts.

This chapter looks at cases that involve commercial quantity of drugs and the application of the law in such cases. The chapter critiques the basis for classifying certain quantities of drugs as commercial in the context of pharmaceutical drugs. It scrutinises the 2009 Notification under the Act, mentioned earlier in the section on legislative developments, which specifies that the entire drug quantity shall determine sentencing and not just the pure quantity.

Finally, it assesses the mandatory minimum sentences for these offences. As seen from prison data in Table 8, the NDPS Act has resulted in higher conviction rates compared to all other legislations. Graph 9 and Table 13 below further demonstrate that amongst the total number of NDPS prisoners, most individuals are imprisoned under S.22. For the purpose of this Report, S. 22 offences are referred to as offences involving pharmaceutical drugs.

Graph 9
Total Number of Prisoners under the NDPS Act in Punjab

Source
Based on RTI Application Responses—Districts included are: Hoshiarpur, Patiala, Barnala, Fazilka, Sangrur, Mansa, Rupnagar. See Appendix for Detailed Information.



DISTRICTS	22	21	20	18	15
BARNALA	52	7	0	1	14
FAZILKA	33	16	12	22	56
HOSHIARPUR	76	31	5	5	39
MANSA	88	9	1	8	64
NABHA	49	14	11	14	49
PATIALA	161	35	15	81	187
RUPNAGAR	49	0	0	0	0
SANGRUR	171	8	8	41	142
TOTAL	679	120	52	172	551

Table 13
Total Number of Prisoners under Various Sections of the NDPS Act in Punjab

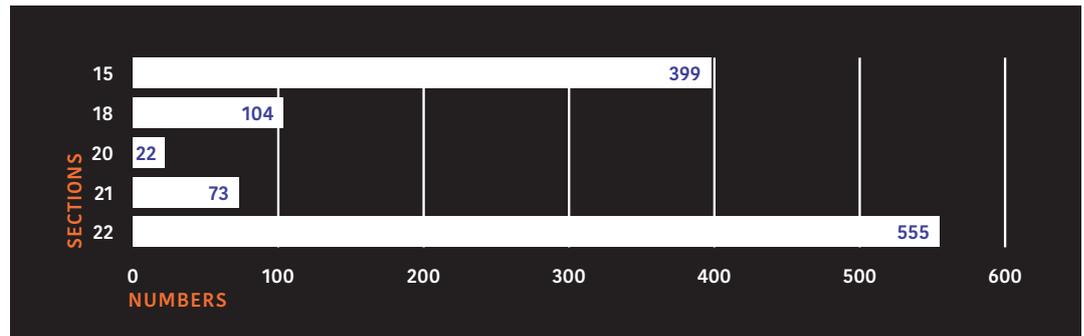
Source
Based on RTI Application Responses—Districts included are: Hoshiarpur, Patiala, Barnala, Fazilka, Sangrur, Mansa, Rupnagar. See Appendix for Detailed Information.

Graph 10 and Table 14 below further illustrate that the highest number of prisoners sentenced to a mandatory minimum term of ten years are under S.22.

Since mandatory minimum sentences of ten years are given to cases involving commercial quantities of drugs, Graph 11 and Table 14 make it clear that a disproportionately large number of persons are being convicted for carrying commercial quantities of drugs under S.22. The reasons for this are explored below.

Graph 10
Number of Prisoners Sentenced to 10 Years and Above

Source
Based on
RTI Application responses—
Districts Included are:
Hoshiarpur, Patiala, Barnala,
Fazilka, Sangrur, Mansa,
Rupnagar. See Appendix for
District-wise Information.



DISTRICTS	22	21	20	18	15
BARNALA	47	7	0	1	11
FAZILKA	26	6	3	7	29
HOSHIARPUR	61	29	3	3	31
MANSA	86	3	1	3	53
PATIALA	144	21	10	58	161
RUPNAGAR	46	0	0	0	0
SANGRUR	145	7	5	32	114
TOTAL	555	73	22	104	399

Table 14
Total Number of
Prisoners Sentenced
to Ten Years and
Above under the
NDPS Act in Punjab

Lower Threshold for Pharmaceutical Drugs

Pharmaceutical drugs are synthetic drug substances. The active drug ingredient of these substances is largely found in medicines, such as alprazolam (for anxiety and pain disorders), codeine (in cough syrup), dextropropoxyphene (as an analgesic), and diphenoxylate (for diarrhoea). These substances are punishable under the NDPS Act. The Schedule of the NDPS Act assigns lower values for commercial quantity of pharmaceutical drugs than for narcotic drugs. For instance, commercial quantity for diphenoxylate is above 50 grams, for alprazolam above 100 grams, and for buprenorphine above 20 grams. These values can be compared to the commercial quantity threshold for narcotic drugs, some of which are heroin (250 grams), opium (2500 grams) and poppy husk (50 kg). Consequently, it is more likely for a pharmaceutical drug to reach the threshold of commercial quantity than for a narcotic drug.

The 2009 Notification

As discussed earlier, the 2009 Notification to the NDPS Act called for determining to the weight of the total recovered substance, and not of the individual pure drug ingredient. This Notification has changed sentencing in judgments across Punjab. Prior to the Notification, sentences were determined by weight of the active drug ingredient and not the whole substance.⁶³ This impacts sentencing dramatically, as seen in the following cases:

In a Special Court judgment in Moga, *State v. Kuldeep Kumar Singh*,⁶⁴ the accused was found carrying 12,500 tablets of reclam (containing alprazolam), 500 tablets of diazepam, 5,000 tablets of lomitol (containing diphenoxylate), and 30 bottles of recodex (containing codeine) without licence or authorisation. Since the drugs in this case were recovered before the 2009 notification, the convict was sentenced according to the weight of the 'pure drug ingredient' and not the total mass. The active drug ingredient constituted 6 grams alprazolam in 12,500 tablets, 12 grams diphenoxylate in 5,000 tablets, 2.4 grams diazepam in 500 tablets, and 5.94 grams codeine in 30 bottles of cough syrup. All of these substances were under or close to the 'small quantity' classification. The accused was sentenced under S.22(a) and (b) of the NDPS Act to rigorous imprisonment of 6 months.⁶⁵

In stark contrast stand judgments where the drugs were recovered after the 2009 Notification. For example, in a case from Mansa, *State v. Darshan Lal*,⁶⁶ the accused was sentenced to 10 years of rigorous imprisonment and a fine of ₹1,00,000 for carrying 2,000 tablets of Lomitol, containing diphenoxylate. Similarly, in Patiala, in *State v. Sandeep Kumar & Vikram Singh*,⁶⁷ accused Sandeep Kumar and Vikram Singh were found with 768 and 744 capsules of spasmo proxyvon containing dextropropoxyphene. Applying the 2009 Notification, they were sentenced to 10 years and seven years respectively, even when the active drug substance 'dextropropoxyphene' weighed 99.2 mg/capsule. The accused Vikram Singh was penalised for the total weight of the capsules (508 grams) as opposed to the weight of the active ingredient alone (76.1 grams). Had only pure substance been considered, the accused would have been sentenced for carrying intermediate and not commercial quantity of drugs.

As previously mentioned, the Schedule classifying small and commercial quantity under the NDPS Act assigns a lower threshold for pharmaceutical drugs vis-à-vis narcotic drugs. Further, due to the 2009 Notification, which criminalises drug offences based on 'whole quantity,' pharmaceutical drug cases easily qualify as commercial quantity. This is despite the fact that the active (banned) drug ingredient is only a small percentage of the total weight of the capsule/tablet/cough syrup. Mandatory minimum sentences are awarded when an individual possesses commercial quantities of drugs.

We studied sentencing patterns across four districts to understand the minimum quantity of pharmaceutical drugs recovered, which have

63. *E Micheal Raj v. Narcotics Control Bureau*, AIR 2008 SC 1720.
64. *State v. Kuldeep Kumar Singh*, Decided on 22.01.2014, In the Court of Gurjant Singh, Special Court, Moga, Case number 615.
65. *State v. Jagdev Singh*, Decided on 23.09.2013, In the Court of Mandeep Pannu, Special Court, Mansa, Case number 220: The drug recovery was made prior to the 2009 Notification. As the 2009 Notification did not have any retrospective effect, the accused was sentenced based on the active drug ingredient (0.960 grams of diphenoxylate) instead of the bulk recovery (400 momolit tablets) to 15 days and fine of Rs 100/-.
66. *State v. Darshan Lal*, Decided on 03.11.2014, In the Court of Mrs Mandeep Pannu, Special Court, Mansa, Case number 440.
67. *State v. Sandeep Kumar & Vikram Singh*, Decided on 28.11.2014, In the Court of Nirbhaw Singh Gill, Special Court, Patiala, Case number 149.

Table 15
Lowest Drug Recovery
Qualifying as
Commercial Quantity

DISTRICT	ALPRAZOLAM (TABLETS)	CODEINE (BOTTLES)	DEXTROPROPOXYPHENE (CAPSULES)	DIPHENOXYLATE (TABLETS)
Amritsar	-	-	830	900
Barnala	-	-	1600	850
Jalandhar	-	-	1008	-
Patiala	1150	20	800	500

garnered a mandatory minimum punishment of ten years. Table 15 shows the minimum quantity of drugs that have led to courts awarding the mandatory minimum sentence of ten years.

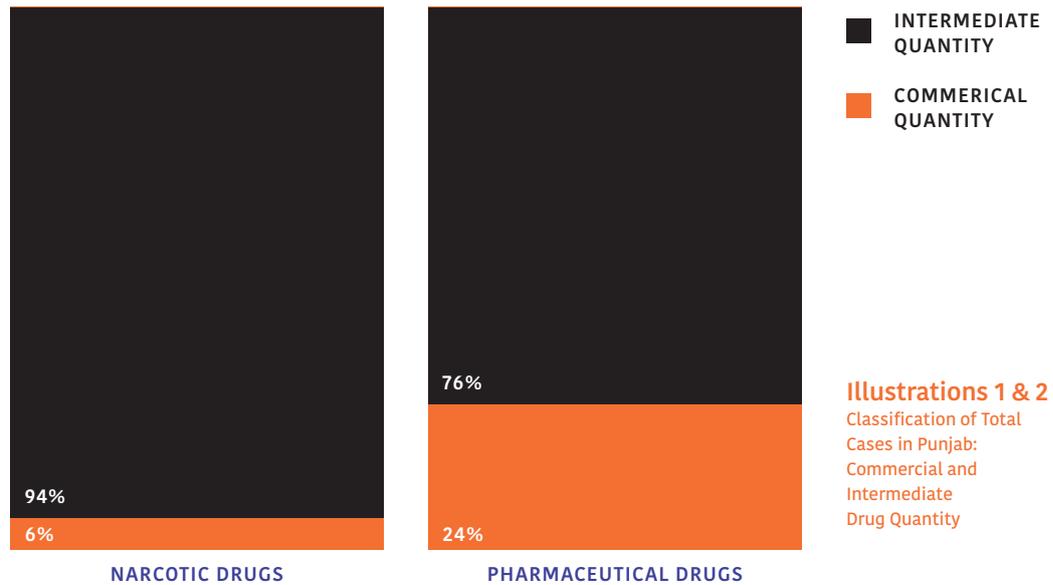
We found that in Patiala, an accused carrying 500 tablets containing diphenoxylate was sentenced to ten years of rigorous imprisonment. In another instance in Patiala, unauthorised possession of merely 20 bottles of cough syrup (containing codeine) resulted in a ten-year sentence. Our findings here reinforce the Act’s disproportionate impact on cases involving pharmaceutical drugs. Pharmaceutical drug cases are assigned harsh sentences within a penal framework that was originally designed to punish drug traffickers.

In its initial recommendations in 2001, the Central Bureau of Narcotics (CBN) suggested reducing commercial quantity for pharmaceutical drugs such as dextropropoxyphene, diphenoxylate and buprenorphine to 20–25 times that of the small quantity. This was because these drugs are often used to make formulations. A small amount of such substances can be used to prepare many tablets, capsules and injections. For instance, 1 gram of buprenorphine can be used to manufacture 8,000 tablets (each containing 0.125 mg of active drug substance).

Similarly, 200 grams of buprenorphine can be used to make approximately 16,00,000 tablets. It is important to highlight that this recommendation was meant to penalise the pure drug substance only. But with the 2009 Notification, the rationale behind this recommendation was lost. As a result, the whole drug substance, and not the pure drug ingredient, determines the severity of sentences. This has impacted pharmaceutical drug cases immensely—certain pharmaceutical drugs now easily qualify as commercial quantity, and receive higher sentences than narcotic drugs. The resultant disproportionality in sentences awarded to pharmaceutical drug cases vis-à-vis narcotic drug cases has been assessed in the next section.

Assessing the ‘Pharmaceutical-Narcotic Drug’ Imbalance in Sentences

Illustrations 1 and 2 further indicate the stark disparity in sentencing between pharmaceutical and narcotic drugs.



Graph 11 indicates that, on average, most pharmaceutical drug-related offences are sentenced to ten years or more, due to a mandatory minimum punishment for commercial quantity offences.

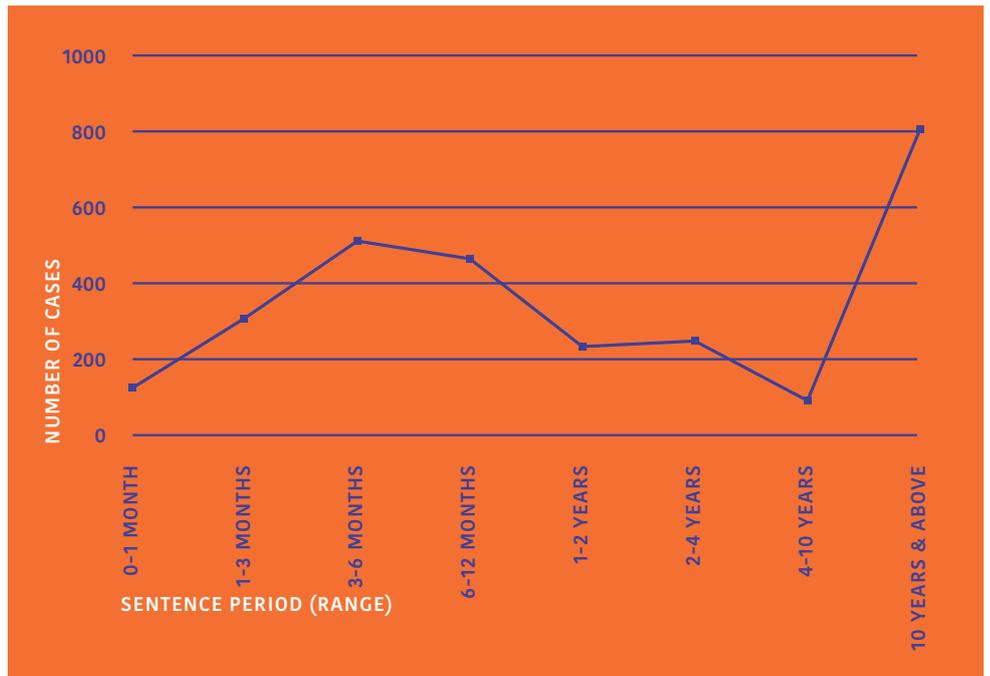
Putting narcotic drug cases and pharmaceutical drug cases together, sentencing patterns can be compared in Graph 12. The graph depicts that while most cases involving pharmaceutical drugs are sentenced to 10 years and above, narcotic drug cases are usually sentenced to a period ranging between one to three months.

As discussed earlier, the NDPS Act provided harsh punishment to drug traffickers to ensure deterrence, and it assumes that people found with commercial quantities of drugs are drug traffickers. Contrary to the correlation between commercial quantity and drug trafficking assumed under the law, our data reveals that cases involving commercial quantity of pharmaceutical drugs in Punjab might often not involve drug trafficking. The example of the case with 20 bottles of cough syrup (containing codeine) that was convicted as commercial quantity supports this argument.

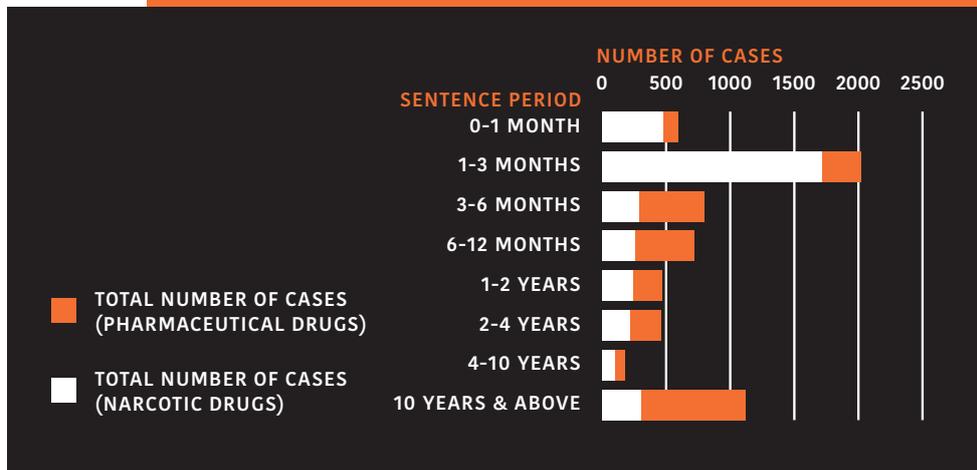
A combination of a lower threshold to determine the commercial quantity for certain pharmaceutical drugs, and the 2009 Notification, has increased the likelihood that cases involving pharmaceutical drugs will qualify as commercial quantity cases, and become subject to mandatory minimum sentences. As a result, the stringent punishment envisaged for traffickers has, in reality, been morphed into punishment for pharmaceutical drug cases, irrespective of the accused being traffickers or not.

This chapter has argued that if the overall aim of harsher sentences is to curb drug trafficking, punishment should be directed towards the banned substance alone. By basing punishment on the whole drug and not the active drug ingredient, the NDPS Act risks unfair convictions of individuals who could merely be drug users and not traffickers.

Graph 11
Average Sentences for
Pharmaceutical Drug
Cases in Punjab



Graph 12
Average Sentencing
Period—Comparison



Arbitrary Sentencing in Pharmaceutical Drug Cases

After examining sentencing problems in intermediate and commercial quantity cases above, this chapter evaluates arbitrary sentences for cases involving pharmaceutical drugs. Arbitrary sentencing under the NDPS Act has been assessed at two levels: (a) disparate sentences and (b) procedural disparities in sampling. Our data records examples of arbitrary sentences, wherein similar quantities of drugs have been assigned disparate punishment under the same law. Further, it demonstrates that an overall ambiguity in the penal framework, combined with a lack of well-defined sentencing guidelines, gives rise to arbitrary sentences.

Disparate Sentences for Similar Quantities of Drugs

In Jalandhar, an accused was sentenced to one year and six months of imprisonment, along with a fine of ₹1,000/- for carrying 50 grams of diphenoxylate.⁶⁸ Similarly, in Amritsar, an accused was sentenced to one year and six months' imprisonment and a fine of ₹3,000/- for carrying 500 grams of dextropropoxyphene.⁶⁹ Even though the quantity of drugs found on both persons was almost commercial quantity, the judges gave them lenient sentences. In contrast, in *State v. Balwinder Singh @ Billu*⁷⁰ in Patiala, the accused was sentenced to 10 years' rigorous imprisonment and a fine of ₹1,00,000/- for carrying 500 grams of intoxicant powder containing dextropropoxyphene. The judge, while sentencing the accused, said that 'Keeping in view the nature of recovery, i.e. 500 grams of intoxicating powder containing dextropropoxyphene which is on the verge of commercial quantity, he is not entitled to any lenient view.'

Table 16a further illustrates inconsistencies in the approach taken by judges across districts. These inconsistencies can be seen not just across districts, but even within the same district, as illustrated in Table 16b.

68. *State v. Paramjit @ Kala*, Decided on 07.05.2014, In the Court of Balwant Singh, Special Court, Jalandhar, Case number 29629.
69. *State v. Mehtab Singh*, Decided on 17.07.2014, In the Court of Preeti Sahni, Special Court, Amritsar, Case number 24522.
70. *State v. Balwinder Singh @ Billu*, Decided on 13.08.2014, In the Court of Rajnish Garg, Judge, Special Court, Patiala, Case number 681.
71. *State v. Adish Aggarwal*, Decided on 2.08.2014, In the Court of Harveen Bhadwaj, Judge, Special Court, Jalandhar.
72. *State v. Satpal Singh @ Chotta*, Decided on 27.04.2016, In the Court of Sandeep Singh Jossan, Judge, Special Court, Patiala.

DISTRICT	JUDGMENT	DRUGS RECOVERED	SENTENCE
Jalandhar	<i>State v. Adish Aggarwal</i> ⁷¹	720 spasmo proxyvon capsules (dextropropoxyphene)	Four and a half months of rigorous imprisonment; fine of ₹7,000/-
Patiala	<i>State v. Satpal Singh @ Chotta</i> ⁷²	720 spasmo proxyvon capsules (dextropropoxyphene)	Six years of rigorous imprisonment; fine of ₹50,000/-

Table 16a
Judgments Across Districts for Similar Offences—Patiala and Jalandhar

Table 16b
Judgments in Patiala
for Similar Offences

DISTRICT	JUDGMENT	DRUGS RECOVERED	SENTENCE
Patiala	<i>State v. Kuldeep Singh</i> ⁷³	500 intoxicant tablets (diphenoxylate)	Four years of rigorous imprisonment; fine of ₹20,000/-
	<i>State v. Bheem Sen</i> ⁷⁴	500 intoxicant tablets (diphenoxylate)	Three years of rigorous imprisonment; fine of ₹10,000/-
	<i>State v. Ramesh Kumar</i> ⁷⁵	500 intoxicant tablets (diphenoxylate)	Four months and sixteen days of rigorous imprisonment; fine of ₹3,000/-
	<i>State v. Yashpal</i> ⁷⁶	500 intoxicant tablets (diphenoxylate)	Time served: two months and twenty-nine days of rigorous imprisonment; fine of ₹2,500/-

73. *State v. Kuldeep Singh*, Decided on 19.03.2016, In the Court of Parminder Singh Grewal, Judge, Special Court, Patiala, 35(4).

74. *State v. Bheem Sen*, Decided on 11.03.2016, In the Court of Rajinder Aggarwal, Judge, Special Court, Patiala (73).

75. *State v. Ramesh Kumar*, Decided on 18.04.2016, In the Court of Baljinder Singh, Judge, Special Court, Patiala Case number 781.

76. *State v. Yashpal*, Decided on 2.12.2015, In the Court of Baljinder Singh, Judge, Special Court, Patiala, Case number 1756.

77. *State v. Raj Kumar alias Shanti*, Decided on 10.06.2014, In the Court of Mandeep Pannu, Special Court, Mansa, Case number 402.

It is clear that sentencing for pharmaceutical drugs offences under the NDPS Act varies dramatically across districts and even within districts. While sentencing in cases involving narcotic drugs is remarkably uniform across districts, cases involving pharmaceutical drugs see marked variations, depending on the district as well as the judge dispensing the sentence. This makes justice dispensation akin to a lottery, with sentences primarily guided by judicial whimsy rather than law.

Procedural Disparities in Sampling

In Punjab, judges routinely convict by extrapolating the drug sample sent to chemical laboratories to the whole drug quantity recovered. By doing this, courts often overlook police negligence in adhering to sampling procedures. This section examines judgments in Ludhiana and Pathankot, which are exceptions to the general sentencing trends for drug-related offences across Punjab. It points to the importance of standardising sampling procedures for cases throughout Punjab.

The general trend followed across most districts in Punjab can be explained by the judgment in *State v. Raj Kumar*⁷⁷ (Mansa District). Here, the accused was found with 10 bottles of lomotil containing 100 tablets each. The police sent only one bottle of lomotil for chemical analysis. Chemical examination of one sampled bottle identified 62 mg of diphenoxylate in each tablet, meaning 62 grams of drug substance recovered in total. The defence argued that the remaining 9 bottles of lomotil tablets needed to be examined as well. However, since the sample was received for examination in a sealed condition, the judge was convinced of due compliance with procedure:

Had the bottles been open and in loose [sic] condition, then things would have been different... but since in the present case as already discussed above, the bottles were in sealed condition, no prejudice has been caused to the accused where no separate sample has been drawn out of the remaining 09 bottles.

As a result, the 1,000 tablets of lomotil were classified as commercial quantity (above 50 grams). The accused was sentenced to 10 years of rigorous imprisonment and fine of ₹1,00,000/-.

Contrary to these general sentencing patterns, Ludhiana and Pathankot judgments present exceptions. These have been observed below.

Ludhiana

In Ludhiana, judges do not usually assume that the sample of recovered substance is directly correlated to the bulk/remaining drug substance. Forensic results from the sample are not extrapolated to the entire recovered substance until specific guidelines to prepare a sample are followed.⁷⁸ Unlike other districts, judgments in Ludhiana repeatedly refer to *UOI v. Bal Mukund*⁷⁹ and *Mohd. Saleem v. State of Haryana*,⁸⁰ which prescribe guidelines on drug sampling.

A procedural difference observed in Ludhiana is the way in which samples are prepared. By way of example, in *State v. Sarabjit Khan*⁸¹ the accused was found carrying 216 proxyvon capsules, 192 spasmoproxyvon capsules, 260 parvon spas capsules (all containing dextro-propoxyphene), 40 rankorex bottles of syrup (containing codeine) and 500 phenotil tablets (containing diphenoxylate)—without a licence or permit. The court observed that the recovery memo mentioned only the quantity of contraband. While sampling, the Investigating Officer had failed to note the batch number, year of manufacture, and the manufacturer of each of the recovered medicines.

Further, as the batch number of the sample vis-à-vis the bulk recovery was not recorded, the court refused to presume that the bulk contained the same substance as the sample.⁸² The final drug substances that determined sentencing were significantly lower than the total recovery. The accused was convicted of carrying drugs in intermediate quantity, and sentenced to two years of rigorous imprisonment and a fine payment of ₹10,000/.

Pathankot

In *State v. Honey Manhas*,⁸³ the accused was found carrying 22 bottles of rexcof and corex cough syrup (containing codeine). The defence argued that the sample—two sealed parcels containing one bottle of ‘corex’ and ‘rexcof’ each—did not represent the complete bulk recovery of 22 bottles. The total recovery was found with three sets of batch numbers (5 bottles rexcof with number ACU3225, 7 bottles rexcof with UG3001, and 10 bottles corex with 320-13023-0), but no sample bottle was sent from the 7 rexcof bottles. The defence counsel noted that the officers failed to note the particulars of the recovery—these include the manufacturing date of the bottles, date of expiry etc. The

78. These guidelines are noted under the Standing Instruction No.1/88, which explains the procedure for taking adequate quantity as samples. Drug substance from each package or container should be drawn and separated, and thereafter mixed together, to prepare a sample for chemical examination. Adherence to sampling procedures ensure that the sample is a true representative of the bulk recovery. Quoting from the Standing Instruction No. 1/88, “while drawing one sample in duplicate from a particular lot, it must be ensured that representative drug in equal quantity is taken from each package/ container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot”.

79. *State v. Bal Mukund*, (2009) 12 SCC 161, the accused were found carrying 20 kg of Opium – individually carrying 10 kg of opium in 5 polythene bags of 2kg each. The respondents argued that there was nothing to show that ‘adequate quantity had been taken from each bag’ in the preparation of sample. The Court noticed that PW 7 had taken samples of 25 grams each from all the five bags and then mixed them and sent to the laboratory. There was nothing to show that adequate quantity from each bag has been taken. It was a requirement in law. Further PW7 did not testify as to which of the bags seized had been sent for analysis. No statement had been made by him that the bags produced were the bags in question which were seized or the contraband was found in them. The appeal was dismissed and the High Court judgment was not reversed. The Court observed loopholes in the manner of taking

confessions. Under the law, conviction could not have been made on the basis of the accused's own confessions. Sample was not taken in accordance with the governing standing instruction.

80. *Mohd. Saleem v. State of Haryana*, 2008(2) RCR (Criminal) 128, In the Hon'ble Punjab and Haryana High Court – While the accused 'Mohd. Saleem' was found with 20 kgs of poppy husk in five different bundles, the samples, for purposes of chemical examination, was collected only from one bundle. The conviction was set aside, purely because the sample tested pertained to only 4 kgs of poppy husk. Therefore, possession of 20 kgs of poppy husk could not be proved beyond reasonable doubt.
81. *State v. Sarabjit Khan*, Decided on 14.03.2016, In the Court of Jaspinder Singh, Special Court, Ludhiana, Case number 99.
82. *Ibid.* Judge Jaspinder Singh ruled out the (possibility of) narcotic or psychotropic substance in the whole recovered substance based on forensic reports of sample substances. In fact, the judge noted insufficient grounds to presume that the remaining non-examined tablets/capsules, bottles and injections 'were containing the same psychotropic substance and are of same batch, manufacture year and manufactured by the same company, which were found by the Chemical Examiner in the (sample) tablets/capsules, bottles and injections'.
83. *State v. Honey Manhas*, Decided on 19.10.2015, In the Court of Rajiv Kalra, Special Court, Pathankot, Case number 34.

defence also argued that there was no evidence substantiated by the prosecution to indicate that the lids of the 2 bottles bore the seal of the manufacturer. The possibility that the contents of the sample were tampered with could not be ignored. The defence was successful in raising doubts regarding the samples sent for chemical examination. The court accepted the arguments presented by the defence.

The judge noted that the prosecution had only established evidence for 2 out of the 22 bottles that allegedly had contraband material. The judgment echoed this conclusion, in that only the sample bottles of codeine determined the quantum of sentence. Since 200 ml(s) of codeine was recovered from the sample (intermediate quantity), the accused was sentenced to the period already undergone as an undertrial (3 months), with a fine of ₹3,000.

This chapter has revealed that in theory, the law calls for graded punishment, determined by the quantity of drugs recovered. But judges have often been arbitrary, meting out markedly different punishments for the same quantity of pharmaceutical drugs. There are no clear guidelines for punishment in intermediate quantity cases. Since sentences can range from a few days to ten years, this ambiguity naturally leads to arbitrariness. Even in the presence of specific guidelines, our data reveals further inconsistencies in sentences. These inconsistencies are caused when courts dismiss non-adherence to procedural standards of sampling by investigating officers.

Conclusion

The preceding chapters have shown that strict liability provisions under the NDPS Act have been ineffective in addressing Punjab's drug situation. By basing convictions on possession alone, strict liability provisions have resulted in a high number of convictions, but have also dis-incentivised thorough police investigation.

The rigidity of strict liability provisions makes them unfit to deal with intermediate quantity cases. As our data suggests, most intermediate quantity cases in Punjab seem to involve drug addicts and individual users. Since a sizeable number of intermediate quantity cases veer towards small quantity, judges often view them as addicts and give them minimal punishment. Despite adding to the total number of convictions under the Act, these sentences neither serve the purpose of deterring future criminal behaviour nor offer rehabilitation of addicts. The conceptualisation of intermediate quantity as a category lacks clarity; and in practice, it has failed to serve any purpose.

Additionally, the NDPS Act has failed to be deterrent, as it results in disproportionately heavy sentences for pharmaceutical drug cases. A large number of commercial quantity cases entering the criminal justice system are not actual instances of drug trafficking. Rather, these are cases involving pharmaceutical drugs that fall under commercial quantity due to a low threshold for commercial quantity of certain pharmaceutical drugs under the Schedule, and the 2009 Notification determining sentences based on entire drug recovery. As a result, stringent punishment envisaged for traffickers through mandatory minimum sentences has been ill-directed against pharmaceutical drug cases, irrespective of whether the accused in these cases are traffickers or not.

Finally, judicial discretion has caused disparate sentences. The disparity occurs due to the wide range of sentencing options available to a judge, combined with a lack of sentencing guidelines. Disparate sentences are contrary to the notion of graded punishment prescribed under the law, as similar drug quantities are sentenced to different terms of sentences in Punjab. The lack of uniform sampling procedures adds to the overall inconsistency in sentences for drug cases. The lacunae in the legal framework of the NDPS Act and its application with regards to drug offences in Punjab must be addressed at every level discussed in Part II to enhance the effectiveness of the law. High convictions alone cannot be a criterion to determine the effectiveness of the law. First, when it comes to theoretical assertions, there is no empirical evidence in criminological studies⁸⁴ for claims that deterrent punishment reduces crime rates. Second, as is evident from the findings presented above, the application of the NDPS Act in

84. Harsher punishments do not deter, as explained in Donald Ritchie, Sentencing Advisory Council, 'Does Imprisonment Deter?' (2011) <<https://www.sentencingcouncil.vic.gov.au/sites/default/files/publication-documents/Does%20Imprisonment%20Deter%20A%20Review%20of%20the%20Evidence.pdf>> accessed on 12 January 2017; Andrew von Hirsch et al (1999), 'Criminal Deterrence and Sentence Severity: An Analysis of Recent Research', Warner, K, 'Theories of Sentencing: Punishment and the Deterrent Value of Sentencing', Sentencing from theory to practice, Australian National University and National Judicial, 8-9 February, Canberra (2014) [Keynote Presentation].

85. Ministry of Home Affairs, 'Crime in India 2014' (National Crime Records Bureau) <<http://ncrb.nic.in/StatPublications/CII/CII2014/Compendium%202014.pdf>> accessed on 7 January 2016.

86. Ibid.

87. Projected Population of Punjab between years 2002 and 2015 - 'Technical Group on Population Projections, 'Population Projections For India And States 2001-2026' (Office of the Registrar General & Census Commissioner 2006)' <http://www.educationforallindia.com/Population_Projection_Report_2006.pdf> accessed on 5 January 2017 Data on 'Persons Arrested' - State Narcotics Control Bureau [2002 to 2014 and from 01.01.2015 to 26.05.2015].

88. Per-capita rate of crime is a statistical value of crime rate in relation to people take individually, that is an individual rate of crime in a given area. Per-capita rate of crime has been measured for drug offences in Punjab by comparing two values - projected population in Punjab as on 2001 in 1000's and the crime rate which is calculated in millions.

Graph 13

14 Years Aggregate Data of Cases Registered and Persons Arrested

Source

State Narcotics Control Bureau, Punjab—Cases Registered under NDPS Act from 2002 to 2014 and from 01.01.2015 to 26.05.2015

Punjab suggests the same: high convictions do not seem to have deterred potential drug-related offenders nor lowered crimes rates in Punjab.

Based on aggregate data from the years 2002 to 2015, Graph 13 indicates a steady increase in the number of arrests and cases registered under the NDPS Act in Punjab. In fact, the crime rate peaks as recently as the year 2014.⁸⁵

Further, as per the National Crime Records Bureau, a total of 46,923 cases⁸⁶ were registered under the NDPS Act in 2014 alone. From 2002 until 2014, the per-capita rate of crime under the NDPS Act has considerably increased, as demonstrated in Graph 14.

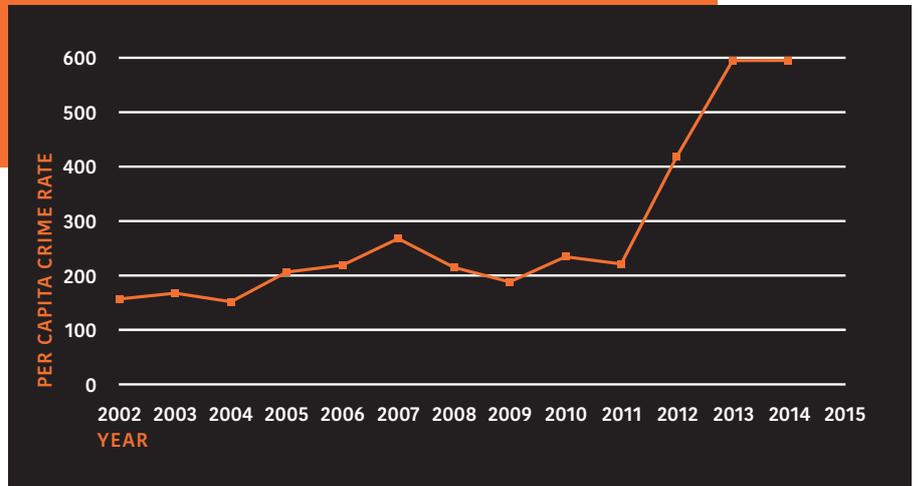
The increasing crime rate and per-capita rate of crime⁸⁸ under the NDPS Act suggest that higher convictions and stringent punishments have not had the desired effect on the drug problem in Punjab. This chapter has outlined possible reasons for this failure.

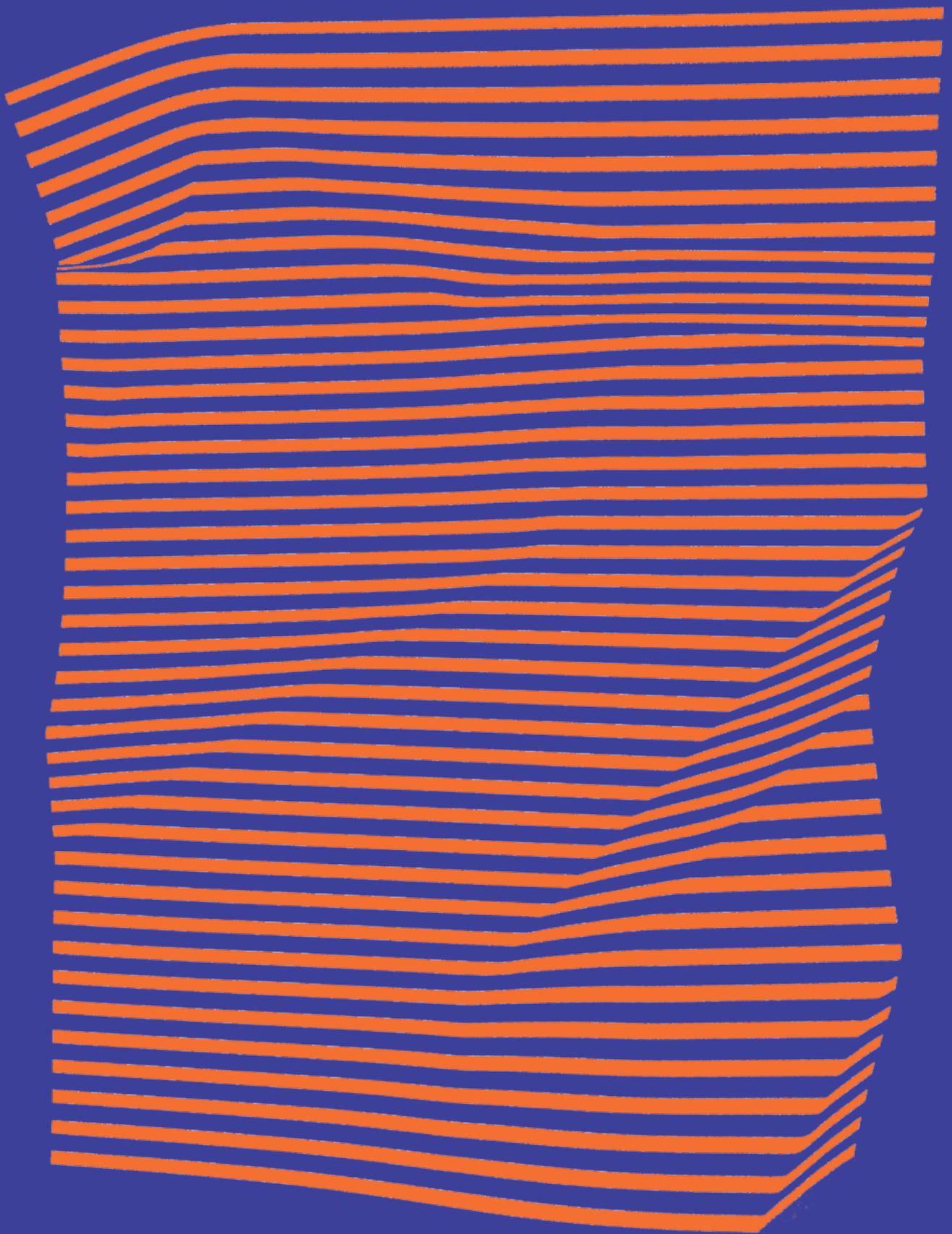
Part II has thus critically assessed the application of the NDPS Act within the criminal justice system of Punjab. Part III examines the second objective of the law—that of rehabilitation. Part III outlines the infrastructural provisions available for de-addiction and rehabilitation of drug addicts in Punjab, the prevailing drug demand strategies and the non-penal provisions of the law with regards to drug consumption and use. It demonstrates how the lack of attention to rehabilitation has further exacerbated the drug situation in Punjab.



CASES REGISTERED (white square)
PERSONS ARRESTED (blue square)

Graph 14
Per-Capita Rate of Crime (Year-wise)





PART III DE-ADDICTION AND REHABILITATION

Part III looks at how the object of rehabilitation is being tackled by the NDPS Act. It engages with the drug addiction situation in Punjab, the patterns of drug use, and the de-addiction facilities available in the State. It goes on to critically analyse the major challenges facing rehabilitation strategies in the State.

Approaches to De-addiction and Rehabilitation

Context

In this chapter, we examine facilities for the prevention, treatment and rehabilitation of addicts in Punjab. We analyse their availability and the quality of treatment they provide to addicts. We also suggest certain changes to the approach towards treatment and rehabilitation in India in general, and Punjab in particular.

89. Society for Promotion of Youth and Masses and National Drug Dependence Treatment Centre, AIIMS, Punjab Opioid Dependence Survey < [http://pbhealth.gov.in/scan0003%20\(2\).pdf](http://pbhealth.gov.in/scan0003%20(2).pdf) > accessed on 14 November 2016.

Present Drug Addiction Scenario in Punjab

Profile of Addicts

The 2015 Punjab Opioid Dependency Survey (PODS/ POD Survey),⁸⁹ conducted by the Society for Protection of Youth and Masses (SPYM) and the AIIMS National Drug Dependence Treatment Centre, points out the following:

- 99% of opioid-dependent individuals are men and are native Punjabi speakers.
- 76% of opioid-dependent individuals are between 18 to 35 years.
- 89% are educated and literate.

DISTRICTS MOST COMMONLY USED DRUGS

Abohar	Opium, Heroin, Morphine
Amritsar	Heroin, Opium, Dextropropoxyphene, Buprenorphine
Balachaur	Opioids, Cannabis, Sedatives
Barnala	Opium, Prescription drugs
Bathinda	Poppy husk, Synthetic drugs, Smack
Faridkot	Heroin, Capsules, Cannabis
Fazilka	Opium, Cannabis, Hallucinogens
Ferozepur	Poppy husk, Heroin, Opium
Gurdaspur	Heroin, Poppy husk, Synthetic drugs
Hoshiarpur	Opium, Heroin, Cannabis
Kapurthala	Heroin, Pharmaceutical drugs
Ludhiana	Cannabis, Sedatives, Injections
Mohali	Opium, Psychotropic substances, Prescription drugs
Nawanshahr	Heroin, Tablets, Injections
Phagwara	Heroin, Pharmaceutical drugs
Tarn Taran	Smack

Table 17

Pattern of Drug Addiction in Punjab

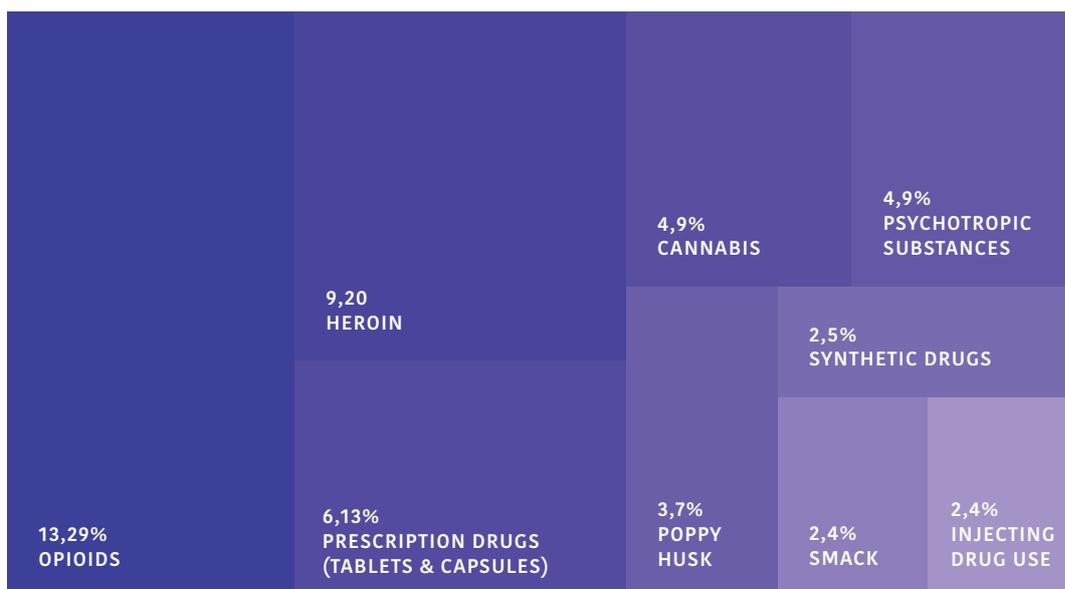
Source

Data compiled by the authors on the basis of information received under the RTI Act from Balachaur (5.2.2016), Bathinda (11.7.2016), Barnala (21.3.2016), Tarn Taran (21.6.2016), Abohar (20.1.2016), Faridkot (8.2.2016), Fazilka (22.1.2016), Ferozepur (16.5.2016), Gurdaspur (16.2.2016), Mohali (25.2.2016), Nawanshahr (29.2.2016), Hoshiarpur (10.2.2016), Phagwara (23.5.2016), Kapurthala (23.5.2016), Ludhiana (25.5.2016), Amritsar (9.3.2016).

Illustration 3 Drug Use in Punjab

Source

Data compiled by the authors on the basis of information received under the RTI Act from Balachaur (5.2.2016), Bathinda (11.7.2016), Barnala (21.3.2016), Tarn Taran (21.6.2016), Abohar (20.1.2016), Faridkot (8.2.2016), Fazilka (22.1.2016), Ferozepur (16.5.2016), Gurdaspur (16.2.2016), Mohali (25.2.2016), Nawanshahr (29.2.2016), Hoshiarpur (10.2.2016), Phagwara (23.5.2016), Kapurthala (23.5.2016), Ludhiana (25.5.2016), Amritsar (9.3.2016).



90. Ibid.

91. Dr. Ravinder Singh Sandhu, 'Punjab Drug Problem: Let's Clear Some Misunderstandings', (*Governance Now*, April 30, 2015) <<http://www.governancenow.com/news/regular-story/punjab-drug-problem-lets-clear-clear-some-misunderstandings>> accessed on 14 November, 2016.

92. Ministry of Health and Family Welfare, Government of India, 'Authorities for control over Drug/ Substance Use', <<http://mohfw.nic.in/index1.php?lang=1&level=0&link-id=229&lid=1353>> accessed on 14-November-2016.

- 83% are employed.
- 54% are married.

Pattern of Addiction

Data gathered through RTI responses (Table 17 and Illustration 3) reveals that the most commonly used drugs in Punjab are opioids, heroin, tablets and capsules. The POD Survey corroborates this, showing that the most common opioid drug used is heroin (53%), followed by opium (33%), and a variety of pharmaceutical opioids (14%).⁹⁰ Dr. Ravinder Singh Sandhu's 2006 study, *Drug Addiction in Punjab: A Sociological Study*, gives a more nuanced picture. Among the respondents, about 20% were taking synthetic drugs, which includes tablets like Proxyvon and Diazepam, and injections of morphine. The second most popular drug was heroin. The study showed that smack and heroin were more popular among educated and economically well-off respondents, who constituted only 5.17% of the sample.⁹¹

Legal Provisions to Address Addiction

Provisions for Addicts under the NDPS Act

The NDPS Act, 1985 acknowledges that drug abusers should get early treatment, and includes provisions under which first-time offenders caught with small quantities can opt for treatment instead of a prison term.

Provisions for Establishing De-addiction and Treatment Centres

Under Government of India (Allocation of Business) Rules, 1961, multiple ministries are responsible for reducing drug demand and supply. The Ministry of Social Justice and Empowerment (MoSJE) handles demand reduction, while the Ministry of Health and Family Welfare (MoHFW) treats and rehabilitates drug addiction.⁹²

S.27 of the Act states that consumption of drugs is an offence and is punishable with imprisonment of up to one year (in case of some drugs) or six months (in case of all other drugs).

S.39: When a person is found consuming drugs or caught with a small quantity of drugs, the judge may allow the offender to opt for drug treatment in a government institution.

S.64A: Addicts can be given immunity from prosecution for consumption of drugs and for offences involving small quantity of drugs, if they agree to undergo treatment in a government institution. This immunity can be revoked if the addict does not complete the required course of treatment.

S.71: The government, at its discretion, can establish centres and set norms for them to identify, treat, manage, educate and rehabilitate addicts and others who medically need drugs.

Box 3 Specific Provisions for Addicts in the NDPS Act

Both Ministries are mandated to fund de-addiction and rehabilitation programmes. For example, the Social Defence Division of the MoSJE must coordinate and monitor drug abuse prevention, which includes assessing the problem, taking preventive action, treating and rehabilitating addicts, and disseminating information for public awareness. It has been running a Scheme for Prevention of Alcoholism and Substance (Drug) Abuse since 1985, which partially funds agencies eligible to set up counselling centres and Integrated Rehabilitation Centres for Addicts or IRCAs (de-addiction centres run by NGOs and voluntary organisations that receive financial assistance from the government).⁹³

The MoHFW is also mandated to run treatment and rehabilitation programmes for drug addicts. It funds organisations like the National Drug Dependence Treatment Centre (NDDTC) at AIIMS, and de-addiction centres in Chandigarh (PGIMER), Pondicherry (JIPMER), and Bangalore (NIMHANS).⁹⁴

National Fund for Control of Drug Abuse

S.7A of the NDPS Act empowers the Central Government to establish a fund for preventing and controlling drug abuse; identifying, treating and rehabilitating addicts; and educating the public against drug abuse.

State of De-Addiction and Treatment Facilities

Infrastructure

The Department of Health and Family Welfare in the Punjab Government provides de-addiction treatment and rehabilitation services through a network of medical institutions. Each sub-divisional and district hospital has a drug de-addiction centre, with at least 10–20 beds and a psychiatrist. The hospitals also offer OPD treatment for addicts. Currently, there are 31 government-run de-addiction centres

93. Ministry of Social Justice and Empowerment, Government of India [2015], Scheme of Assistance for Prevention of Alcoholism and Substance (Drugs) Abuse and for Social Defence Services – Guidelines.
94. Ministry of Health and Family Welfare, Government of India, 'Drug De-addiction Programme (DDAP), [2012] <<http://www.mohfw.nic.in/index1.php?lang=1&level=5&sublinkid=4486&lid=2146>> accessed on 14-November-2016.
95. Yogesh Rajput, 'Punjab Drug Problem: De-addiction and Beyond', (*Governance Now*, April 28, 2015) <<http://www.governancenow.com/news/regular-story/punjab-drug-problem-deaddiction-and-beyond>> accessed on 14-November-2016.
96. Punjab Government, 'Note on Deaddiction Services', <<http://www.pbhealth.gov.in/16note.pdf>> accessed on 14 November 2016 and List of Government Approved Rehabilitation Centres <http://pbhealth.gov.in/2_%20List%20Of%20Approved%2017%20Govt_%20Rehab.pdf> accessed on 15 November 2016 and <<http://www.tribuneindia.com/news/nation/punjab-addicts-hooked-on-cheap-treatment-drug-at-govt-rehab-centres-open-market/117915.html>> accessed on 14 November 2016.
97. 'Punjab Budget 2014-15: Rehabilitation centres, skill development for youth', (*Hindustan Times*, July 16 2014) <<http://www.hindustantimes.com/chandigarh/punjab-budget-2014-15-rehabilitation-centres-skill-development-for-youth/story-u67cs2zlpK-3CvQd4ISpaQI.html>> accessed on 14 November 2016.
98. Department of Health and Family Welfare, Government of Punjab, 'Information regarding

de-addiction efforts by Government of Punjab' <<http://pbhealth.gov.in/4rehab.pdf>> accessed on 14 November 2016.

99. Ibid.

100. Ibid.

101. Punjab Substance Use Disorder Treatment and Counselling and Rehabilitation Centres Rules, 2011 <http://www.pbhealth.gov.in/pdf/substance_drugs.pdf> accessed on 14 November 2016.

102. Ibid.

103. Department of Health and Family Welfare, Details of Private De-addiction Centres <<http://pbhealth.gov.in/3pvtdecentres.pdf>>; Details of Private Rehabilitation Centres <<http://pbhealth.gov.in/4rehab.pdf>>.

104. Department of Health and Family Welfare, Details of Government De-addiction Centres <<http://pbhealth.gov.in/Status%20of%20Govt.pdf>>.

105. Department of Health and Family Welfare, Government of Punjab, 'De-addiction Efforts of Punjab Government' <<http://www.pbhealth.gov.in/16note.pdf>> accessed on 14 November 2016.

106. Ministry of Social Justice and Empowerment, 'Drug De-addiction Centres' (Press Information Bureau, 4 August 2015) <<http://pib.nic.in/newsite/PrintRelease.aspx?relid=124284>> accessed on 12 November 2016.

107. Rajya Sabha, Unstarred Question No. 1796 on Drug Addiction Along Border Areas of Pakistan (5 August 2015) <<http://mha1.nic.in/par2013/par2015-pdfs/rs-050815/1796.pdf>> accessed on 5 October 2016.

in the State, out of which 26 are functional.⁹⁵ The government has approved 21 counselling and rehabilitation centres (50 beds each) in the State, out of which 17 are operational.⁹⁶ These centres are managed by a de-addiction and rehabilitation society established in each district. A budget of ₹100 crores was allocated in 2014-15 to set up these centres.⁹⁷

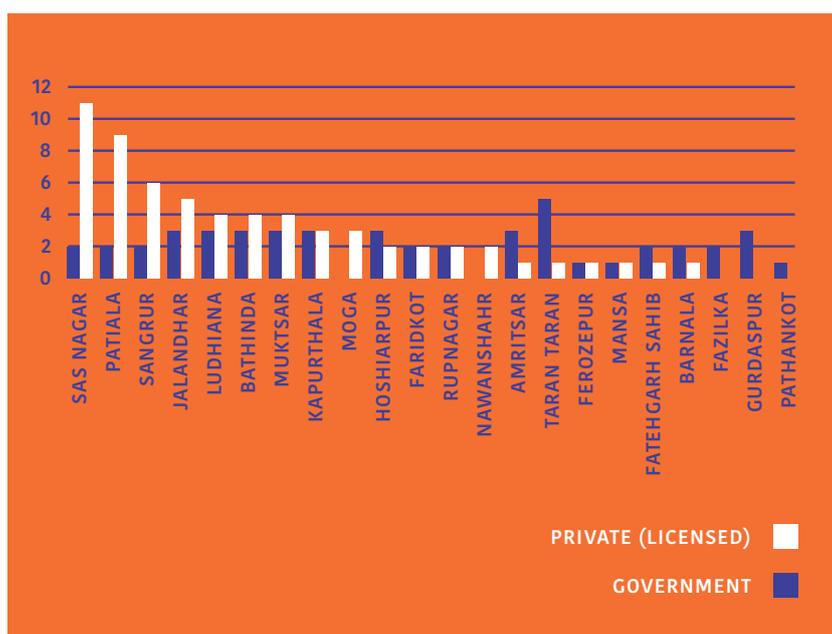
In addition to government facilities, there are private de-addiction and rehabilitation centres operating in most districts. At present, there are 65 private licensed rehabilitation centres⁹⁸ and 10 de-addiction centres in Punjab.⁹⁹ The Red Cross Society also runs eight de-addiction and rehabilitation centres in various districts.¹⁰⁰ Under the Punjab Substance Use Disorder Treatment and Counselling and Rehabilitation Centres Rules, 2011,¹⁰¹ all centres must obtain a licence before they can operate in the State. Existing centres must get a licence within three months of the issuance of these Rules. The Rules specify the physical and medical standards and the minimum human resources requirement of each type of centre.¹⁰² Although private de-addiction and rehabilitation centres outnumber government facilities, not all districts have them, such as Fazilka, Gurdaspur, and Pathankot. Moga and Nawanshahr, on the other hand, have private facilities only (see Graph 15).

In addition, there are five 'model centres' holding a capacity of 50 beds each in Jalandhar, Patiala, Amritsar, Faridkot and Bathinda (of which Amritsar and Faridkot are fully functional). All these model centres operate under the Amritsar, Patiala and Faridkot medical colleges.¹⁰⁵

Under the Scheme of Assistance for Prevention of Alcoholism and Substance (Drug) Abuse, there are 11 IRCAs being run by 11 NGOs in Punjab.¹⁰⁶ The government has further sanctioned 28 new IRCAs in Punjab.¹⁰⁷

Graph 15
Total Number of Government and Private (De-addiction and Rehabilitation) Centres

Sources: Private De-addiction and Rehabilitation Centres¹⁰³ and Government Drug Addiction Centres.¹⁰⁴



NAME OF NGO	LOCATION OF IRCA	GRANTS-IN-AID (2013-14 TO 2015-16)
Indian Red Cross Society, Chandigarh	Gurdaspur	₹958,200
Indian Red Cross Society, Mansa	Mansa	₹1,629,667
Indian Red Cross Society, Moga	Moga	₹2,101,376
Indian Red Cross Society, Bathinda	Bathinda	₹1,683,063
Indian Red Cross Society, Faridkot	Faridkot	0
Indian Red Cross Society, Sangrur	Sangrur	₹1,744,642
Indian Red Cross Society, Ludhiana	Ludhiana	₹1,270,800
District De-addiction & Rehabilitation Society, Sangrur	Sangrur	₹405,000
District De-addiction & Rehabilitation Society, Bathinda	Bathinda	₹202,500
District De-addiction & Rehabilitation Society, Fazilka	Fazilka	₹202,500

108. Ministry of Social Justice, 'State-wise details of Grants-in-aid released to NGOs under the Central Sector Scheme for Assistance of Prevention of Alcoholism and Substance (Drugs) Abuse during 2015-16' <<http://socialjustice.nic.in/writereaddata/UploadFile/Final%20Annual%20Report-2015-16.pdf>> accessed on 5 October 2016.

Table 18
IRCA's managed by NGOs in Punjab

Source
Grants-in-aid released to NGOs under the Central Sector Scheme for Assistance of Prevention of Alcoholism and Substance (Drugs) Abuse during 2015-16¹⁰⁸

109. Matthew John, 'The NDPS Act: Room for greater reform', Center for Public Policy Research – Atlas Public Policy Challenge (2015) <<http://www.cppr.in/wp-content/uploads/2016/05/NDPS-Act-Room-for-greater-reform.pdf>> accessed on 29 November 2016.

Major Issues and Challenges of De-addiction and Rehabilitation Strategy in Punjab

Criminalisation of Users

As outlined in Box 3, S.27 of the NDPS Act makes consuming any narcotic drug or psychotropic substance a criminal offence. This criminalises users and addicts but there is little evidence to show that incarcerating drug addicts reduces the demand for drugs.¹⁰⁹

Moreover, in terms of punishment, S.27 does not differentiate between habitual consumers, and first-time or occasional users who could benefit from early identification and education on substance abuse. These penal sanctions do not address the need to rehabilitate such users, although that would likely be more effective in tackling Punjab's drug problem.

DISTRICT	GOVERNMENT FACILITIES	CASES UNDER NDPS ACT (2014)
Amritsar	60	2411
Barnala	10	167
Bathinda	25	490
Faridkot	50	282
Fatehgarh-Sahib	10	299
Fazilka	10	527
Ferozepur	10	722
Gurdaspur	20	507
Hoshiarpur	20	519
Jalandhar	15	1627
Kapurthala	10	653
Ludhiana	20	1165
Mansa	10	397
Moga	0	625
Muktsar	20	345
Nawanshahr	10	261
Pathankot	10	83
Patiala	10	931
Rupnagar	10	135
Sangrur	10	636
SAS Nagar	10	206
Tarn Taran	33	1147

Table 19
Available Facilities and
Number of Cases under the
NDPS Act in Punjab (2014)

Source
De-addiction efforts of Punjab
government (http://pbhealth.gov.in/de_efforts.html) and
data collated by Vidhi

Internationally, views on drug addiction have shifted. An increasing number of countries, and the World Health Organisation, recognise the failures of drug policies centred on criminalisation of drug use.¹¹⁰

In India, too, experts have proposed alternatives to criminalising addicts. In 1995, the Expert Committee on Small Quantities (under the Act) proposed that drug addicts be provided with ‘compulsory treatment by judicial order and institutional facilities for treatment and rehabilitation’ instead of punishment.¹¹¹

No Court-mandated Diversion of Addicts for Treatment

As mentioned in Box 3, Ss. 39 and 64A of the NDPS Act allow people caught with small quantities of drugs, or with drugs for personal consumption, to opt for de-addiction treatment in a government-approved centre instead of imprisonment¹¹² or prosecution.¹¹³ But responses to RTIs we filed clearly establish that between 2013 and 2015, no person brought before the court in Punjab was directed to de-addiction and rehabilitation through the courts.¹¹⁴ Various interviews with judges and lawyers revealed that this provision for diverting addicts was mostly unknown to the legal practitioners and judges.¹¹⁵

Even if this provision were used more often, the law would still be restrictive because it allows only those caught with small quantities to be diverted for treatment. There is no provision for judges to exercise discretion for those caught with intermediate quantities, which is a very wide range between small and commercial quantities, and refer them for treatment. As has been discussed in previous chapters, classifying drug quantities into small, intermediate and commercial is itself problematic because these quantities are seemingly arbitrary and the reasoning behind them is unclear. As a result of this arbitrariness, addicts found with intermediate quantities of drugs are being denied the de-addiction treatment that they need.

Overlapping Responsibilities and Limited Role of Central Ministries

There is an overlap of responsibilities between ministries for treatment and rehabilitation. Although the MoSJE is the nodal ministry for reducing drug demand,¹¹⁶ the MoHFW is responsible for funding the central government’s de-addiction centres and for coordinating with other agencies on matters related to de-addiction.¹¹⁷

Thus, both Ministries are mandated to fund de-addiction and rehabilitation programmes.

Ironically, even though the MoSJE has a specific agenda, its output is unclear. Their annual reports show that there have been no major changes in strategies to combat drug abuse and no significant outcomes either. The reports emphasise the need to accurately assess the ‘extent, pattern and trends of substances consumed’, adopt ‘preventive measures to reduce both demand and supply’ and strengthen IRCAs, with little evidence for any steps undertaken towards these ends. Token measures undertaken are limited to conducting awareness camps and observing the International Day against Drug Abuse.

110. Report by the Royal Society for Public Health, UK, (2016) ‘Taking a new line on drugs’.

111. Dr. JS Sapna, Dr. SK Gupta and Dr. S Saxena, Expert Committee on Small Quantities under the NDPS Act (Ministry of Health and Family Welfare, 24 March 1995).

112. S.39 of the NDPS Act allows the Court to release certain offenders for undergoing medical treatment.

113. S.64A of the NDPS Act provides immunity from prosecution to addicts volunteering for treatment.

114. Based on information received under the RTI Act from Balachur (5.2.2016), Tarn Taran (21.6.2016), Faridkot (8.2.2016), Fazilka (22.1.2016), Ferozepur (16.5.2016), Gurdaspur (16.2.2016), Mansa (11.2.2016), Banga (14.3.2016), Jalandhar (23.2.2016), Nawanshahr (29.2.2016), Hoshiarpur (10.2.2016), Phagwara (23.5.2016), Kapurthala (23.5.2016), Ludhiana (25.5.2016), Pathankot (13.5.2016), Sangrur (23.10.2016).

115. Interviews with Sanjeev Gupta, Public Prosecutor of Patiala (Patiala, 14 January 2016), Rajinder Singh, Additional Sessions Judge (Patiala, 14 January 2016) and Tripti Tandon, Lawyer (Delhi, 9 November 2015).

116. Ministry of Social Justice and Empowerment, Govt. of India, S.71, Narcotic Drugs and Psychotropic Substances Act, 1985 Annual Report 2015-16, pp. 30 <http://socialjustice.nic.in/writereaddata/UploadFile/SOCIAL%20JUSTICE%20ENGLISH%2015_16.pdf> accessed on 10-Aug-2016.

117. Ministry of Health and Family Welfare, Govt. of India, Drug De-addiction Programme, <<http://mohfw.nic.in/index1.php?lang=1&level=0&linkid=227&lid=1350>> accessed on 10 August 2016.

118. Ministry of Social Justice and Empowerment, 'Drug De-addiction Centres' (Press Information Bureau, 4 August 2015) <<http://pib.nic.in/newsite/PrintRelease.aspx?relid=124284>> accessed on 12 November 2016.
119. Ministry of Home Affairs, 'Crime in India 2014' (National Crime Records Bureau) <<http://ncrb.nic.in/StatPublications/CII/CII2014/Compendium%202014.pdf>>. For the purpose of this analysis, we are assuming that these are cases of addiction requiring treatment.
120. Interview of Dr. PD Garg, Psychiatrist, Vivekanand De-addiction Centre (Amritsar, 8 March 2016).
121. Yogesh Rajput, 'Punjab Drug Problem: De-addiction and beyond', (*Governance Now*, April 28, 2015) <<http://www.governancenow.com/news/regular-story/punjab-drug-problem-dead-diction-and-beyond>> accessed on 30 November 2016.
122. 'Drug addicts reveal shocking tales of torture in Punjab private rehab clinics', (*India Today*, May 9, 2014) <<http://indiatoday.intoday.in/story/drug-addicts-shocking-tales-of-torture-punjab-private-rehab-clinics/1/359801.html>> accessed on 25 January 2017.
123. The Punjab Substance Use Disorder Treatment and Counselling and Rehabilitation Centre Rules, 2011.

Despite underlining the need for 'accurate assessment' of drug consumption, the MoSJE has not conducted either a nation-wide or state-wide survey. Even the Punjab-specific survey it conducted in 2015 is under its 'scrutiny' and has not been made public. Because of this opacity, there is no accurate information available to assess or monitor the situation.

Infrastructural Constraints

Given the scale of the problem, the infrastructure available for treating addicts is inadequate. The PODS states that although 80% of people reported that they tried to give up drugs, only 35% reported receiving any help or treatment. Only about 16% said that they had received medical treatment (i.e. medicines to treat withdrawal symptoms) and less than 10% of opioid-dependent individuals received OST. Further, Punjab has only 11 IRCAs, as against 59 in Maharashtra, 34 in Karnataka and 33 in Orissa.¹¹⁸

Comparing the number of beds in government facilities with cases registered under the NDPS Act in 2014¹¹⁹ in 2014, inadequacy of de-addiction facilities (Table 19). These figures may not represent the actual number of addicts in Punjab but have been considered an approximation in the absence of any other data. As the previous chapters have suggested, most cases registered under the NDPS Act involve users and addicts rather than traffickers. It is probable that addicts in the state far outnumber those that are caught under the Act.

Low Quality of Treatment Facilities

Although the government has issued minimum standards for treatment facilities, interviews with officials in these centres show that medically or scientifically devised measures for de-addiction and rehabilitation are markedly absent. Interviews with staff at the Vivekanand De-addiction Centre in Maqboolpura, for instance, revealed that centres suffer from inadequate staffing, equipment and doctors.¹²⁰

Many news reports have documented the poor quality of care that private facilities provide, as well as the high fees they charge, which range from ₹3,000 to ₹10,000 per day depending on the financial background of the addict.¹²¹ A 2014 survey conducted by the Department of Community Medicine of Dayanand Medical College (DMC), Ludhiana, found that dozens of new private centres had come up in Punjab without proper infrastructure or trained staff.¹²²

Limitations of Demand Reduction Strategies

The Punjab Substance Use Disorder Treatment Rules, 2011 lay down minimum standards for de-addiction and rehabilitation centres.¹²³

They state that patients will not be forced to undergo detoxification treatment without being informed of the range of treatment options available to them, including substitution therapy and psychosocial intervention. They also say that rehabilitation counselling can take place only after the patient undergoes detoxification from a recognised centre. These standards, however, are limited by the availability of physical and medical facilities.

DISTRICTS DRUG DEMAND REDUCTION STRATEGIES

Balachaur	Detoxification treatment, public awareness lectures
Banga	Awareness camps organized in truck unions, colleges etc.
Faridkot	Camps, rallies, plays
Fazilka	Weekly counselling sessions in schools, colleges and village panchayat offices
Ferozepur	OST centre provides substitution facility
Gurdaspur	Awareness camps, patients treated under supervision of mental disease experts
Hoshiarpur	Awareness campaigns, medical and para-medical training, celebration of international day against drug abuse and illicit trafficking
Jalandhar	Awareness camps, training ASHA workers for motivating addicts to get treated
Kapurthala	Detoxification treatment, Recreation activity, Individual counselling, Group counselling and Family counselling
Ludhiana	Counselling sessions, free medicines, recreational facilities on the premises
Mansa	Counselling sessions for psychological, spiritual and physical development and vocational courses for career development. Provided with food, well-ventilated wards, clean toilets, gym, yoga training, recreation room with LCD screen, laundry facilities.
Nawanshahr	Detoxification treatment, public awareness lectures and campaigns
Pathankot	Counselling sessions, indoor sports including chess, ludo, carom, outdoor sports including badminton, volleyball, yoga, and exercises, T.V, meals with tea and fruits.
Phagwara	Detoxification treatment, Recreation activity, Individual counselling, Group counselling and Family counselling
Sangrur	Outdoor treatment, indoor treatment and counselling of patients
Tarn Taran	Patients given three meals, A.C. hall, in-door and out-door games and cable

Table 20
Demand Reduction
Strategies in
De-addiction and
Rehabilitation Centres

Source
Data compiled by the authors on the basis of information received under the RTI Act from Balachaur (5.2.2016), Bathinda (11.7.2016), Barnala (21.3.2016), Tarn Taran (21.6.2016), Abohar (20.1.2016), Faridkot (8.2.2016), Fazilka (22.1.2016), Ferozepur (16.5.2016), Gurdaspur (16.2.2016), Mohali (25.2.2016), Nawanshahr (29.2.2016), Hoshiarpur (10.2.2016), Phagwara (23.5.2016), Kapurthala (23.5.2016), Ludhiana (25.5.2016), Amritsar (9.3.2016).

124. Amandeep Sandhu, 'Why the Parliament Must Carefully Consider A Private Members' Bill To Decriminalise Natural Drugs', (*Caravan*, Nov 4, 2016) <<http://www.caravanmagazine.in/vantage/parliament-consider-bill-decriminalise-natural-drug>> accessed on 30-November- 2016.
125. Sue Pryce *Fixing Drugs: The Politics of Drug Prohibition*, (Palgrave Macmillan, 2012).
126. Dr. JS Sapna, Dr. SK Gupta and Dr. S Saxena, Expert Committee on Small Quantities under the NDPS Act (Ministry of Health and Family Welfare, 24 March 1995).

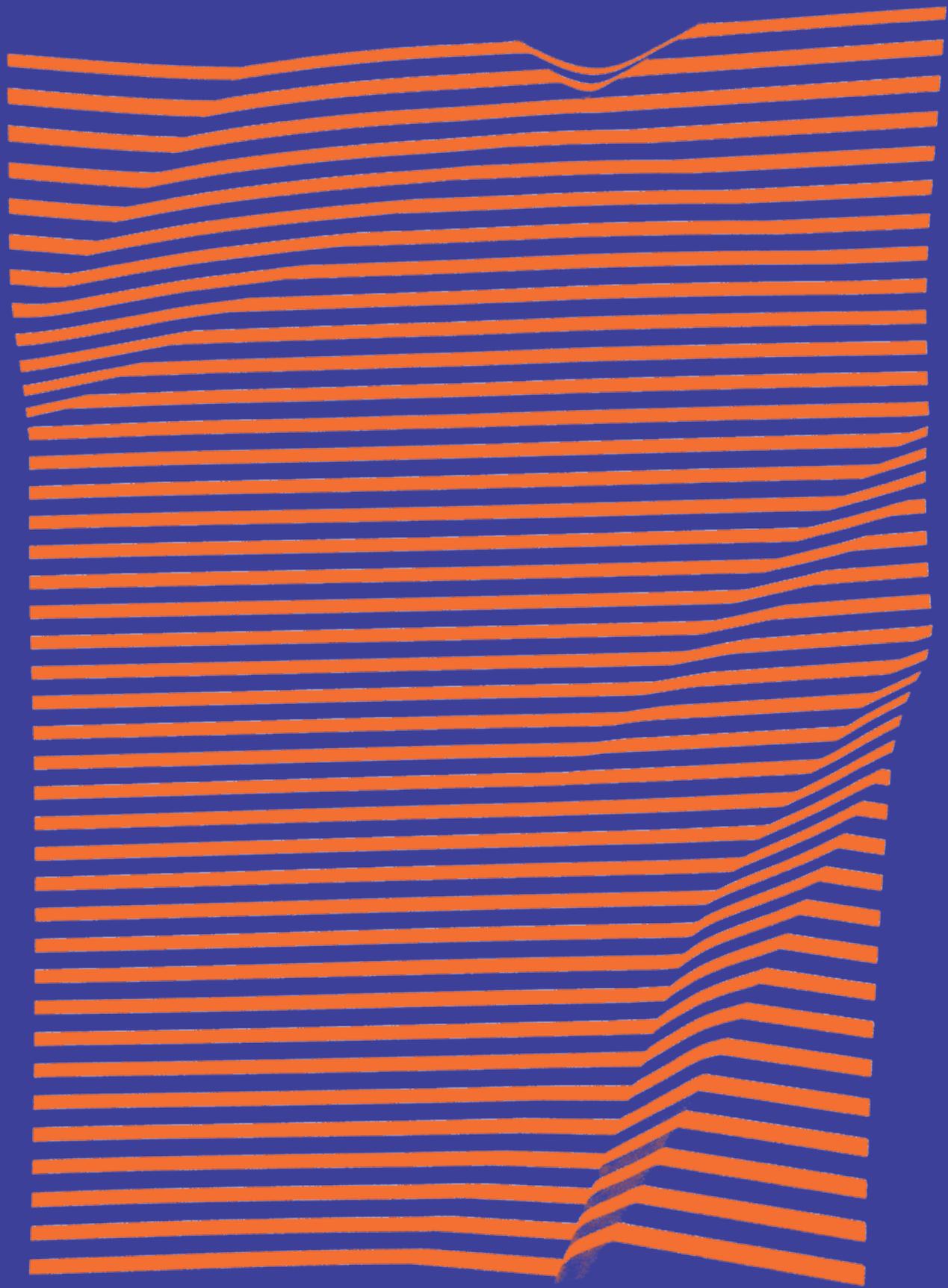
The Rules do not lay down any specified standards or guidelines for an effective rehabilitation strategy. Given the lack of guidelines, it is hardly surprising that strategies to reduce drug demand at most centres are inadequate. As RTI responses (Table 20) show, most centres are not clear on what drug demand reduction entails. Drug demand strategies at most centres usually focus on counselling, and providing recreational facilities, lectures and campaigns. Often, these centres have also referred to providing meals, games and television facilities within the scope of drug-demand strategies.

Conclusion: Towards a Public Health-Centred Approach to Drug Abuse

India has so far followed an approach centred on criminalisation to curb drug addiction. From the preceding chapters, it is clear that the NDPS Act and its implementation strategy has mostly failed to curb traffickers and ended up targeting users and addicts.¹²⁴ According to some sources, the blanket ban on narcotic drugs and psychotropic substances has had many unintended but adverse consequences. It has promoted the use of hard drugs in some cases and given a fillip to smuggling and black marketing.¹²⁵

It is imperative that we move away from criminalising drug addicts and towards an evidence-based, public health approach that treats substance abuse as a health issue. The government has a precedent for such an approach, in the form of a committee report. In 1995, the Expert Committee on Small Quantities under NDPS Act, 1985¹²⁶ recommended that consumption of small quantities of drugs should be decriminalized since harsh punishments for drug abuse were counter-productive. It suggested that early detection, proper psychiatric treatment and comprehensive rehabilitation should be prioritised. It recommended that instead of punishing addicts, the law should provide for compulsory treatment by judicial order and for treatment and rehabilitation facilities.

Decriminalising drug use must be accompanied by investing in the public health system and properly provisioning treatment and rehabilitation of addicts. Punjab needs a balanced drug policy, under which law enforcement focuses on traffickers, smugglers and financiers of drugs; and drug users and addicts are not stigmatised but receive affordable treatment and counselling to ensure that they do not relapse.



PART IV

CONCLUSION AND RECOMMENDATIONS

The NDPS Act was enacted as a deterrent against trafficking. However, as our Report has shown, the law has not lowered crime rates for drug offences or trafficking in Punjab. Instead, a disproportionate number of addicts have been incarcerated under it. Therefore, it is necessary to rethink handling addiction through the criminal justice system, and consider adopting a public health framework.

Further, the Central Government must co-operate with Punjab in amending the legal framework, and gathering data on the extent and pattern of drug use. The State Government can focus on ensuring that infrastructure and financial resources are adequate and all treatment centres adhere to minimum quality standards. If the policies are re-oriented along these lines, drug addiction in Punjab can be tackled more meaningfully and effectively.

Drug Use and Possession of Small Quantities of Drugs

Based on our data, no person has been sent to de-addiction centres by any court in Punjab. S.39 and S.64A, which allow addicts to be diverted out of the criminal justice system, have been reduced to dead letters on paper. Addiction continues to be viewed as a criminal offence. The police, prosecution and courts, entrenched in the mind-set of the criminal justice system, have failed to treat addiction as a health issue that needs medical care and not criminalisation.

Government-appointed committees have also pointed out that addiction is a health problem and not a criminal offence, but this has been ignored. As mentioned, the Expert Committee on Small Quantities under the NDPS Act recommended decriminalising drug abuse in its report to the MoHFW. The Committee opined that criminalising addiction stigmatises it, and inhibits addicts from coming forward for treatment. In its guidelines for rehabilitation centres, the Department of Health and Family Welfare in Punjab has stated that rehabilitation can be achieved only by destigmatising addiction and developing awareness about the consequences of addiction. But as long as the law criminalises drug abuse and addiction, the stigma surrounding addiction will remain.

Recommendations

India should remove criminal penalties for drug use and instead treat it as an administrative offence. The police or judicial authorities should refer addicts to an administrative body. This body, consisting of legal, health and social work professionals, can then decide to penalise the user with a warning, fine, or community service, or encourage him to seek treatment.

De-addiction and Rehabilitation

Our findings show that the facilities available for treating addicts are inadequate. Further, treatment and demand reduction strategies within existing hospitals are inadequate. RTI responses from various hospitals and de-addiction centres reveal that rehabilitation strategies largely focus on counselling, and on providing recreational and sports facilities, lectures and campaigns.

Recommendations

An effective treatment strategy should be developed by consulting experts, partner agencies and users; and allocating adequate resources. Punjab's State Government must assess its infrastructural needs and ensure that they are met. The Central Government should monitor the activities of the State Government.

Jurisdiction

As discussed in the Report, both the MoSJE and the MoHFW are responsible for funding de-addiction and rehabilitation programmes. While the MoSJE handles demand reduction, the MoHFW handles treatment and rehabilitation of drug addicts. De-addiction and rehabilitation, however, are a part of the same process and cannot be broken down and separated into two different functions, allocated to two different ministries.

Recommendations

To effectively tackle drug de-addiction, demand reduction, treatment and rehabilitation should all be allocated to one single Ministry, be it the MoSJE or MoHFW. This will help avoid confusion about the responsibility of the Ministry and ensure greater accountability.

Possession of Intermediate Quantities of Drugs

The Report highlights that by dividing quantity of drugs into small and commercial quantities, the Schedule has created a large negatively defined category of intermediate quantity. For example, intermediate quantity for heroin is between 5 to 250 grams. As shown in Graph 5 of the Report, our data suggests that between 70 to 90% of all cases under the NDPS Act across all districts are cases involving intermediate quantity of drugs. Even within the category of intermediate quantity, most cases veer towards small quantity.

Further, our data shows that most intermediate quantity cases involving narcotic drugs are either sentenced to 1-3 months' imprisonment or to time already served as an under-trial. These cases are thus compelled to go through the criminal justice system without any recourse to treatment and de-addiction. Our data has additionally shown that penalising individuals has not reduced either crime or addiction. The continued mechanical application of the NDPS Act for intermediate quantity cases has resulted in high convictions without offering a long-term remedy to the drug situation in Punjab.

Recommendations

Since intermediate quantity cases largely involve addiction, they should be given the benefit of judicial and prosecutorial discretion under S.39 and S.64A. The law should allow addicts to be diverted to rehabilitation through the non-punitive sections of the NDPS Act, regardless of whether they have been found with small or intermediate quantity of drugs. Further, the police and the judiciary should be trained on the non-punitive provisions of the Act. They should be empowered to discharge offenders pre-trial or refer them for treatment before or during the trial.

Possession of Commercial Quantities of Drugs

As outlined in Chapter I, the Department of Revenue Notification dated 18 November 2009 called for determining drug quantity on the basis of the weight of the whole quantity, and not the pure drug quantity. The Notification has in effect worked contrary to the original intent of the Schedule. Due to it, individuals caught with relatively smaller quantities of pharmaceutical drugs are sentenced to a mandatory minimum punishment of ten years.

Recommendations

The 2009 Notification specifying that the entire quantity of drug seized should be considered while determining the punishment, and not just the pure content of the active drug, should be quashed to avoid unfairly convicting people, who could very well be users, for possessing commercial quantity of drugs. The Department of Revenue should issue a fresh notification specifying that only pure quantity of the drug should be considered while awarding punishment. This notification will then be in consonance with the Supreme Court's decision in *E Micheal Raj v. Narcotics Control Bureau*.

Requirement of Intent under the NDPS Act

As Chapter IV outlined, the NDPS Act incorporates strict liability provisions. S.54 provides that possessing any narcotic or psychotropic substance is sufficient to constitute an offence. Similarly, S.35 shifts the burden onto the accused to prove that no mental state to commit the offence existed while committing it. As we have seen, since the law does not require establishing motive or intent, it has resulted in repetitive police narratives across districts, which points towards poor investigation.

Recommendations

To ensure that police apply their minds during investigation, and traffickers are caught instead of users, the law must make intent an ingredient of offences under the NDPS Act. Further, the burden of proof should be on the prosecution to prove that the accused possessed the drug for a particular purpose. Possession alone should not be sufficient to constitute an offence under the NDPS Act.

India should establish threshold quantities (based on drug market realities, drug use patterns and impact on health) to differentiate possession of drugs for personal use from possession for trafficking or supply. Quantity should not be the only determining factor in distinguishing between possession for personal use and for peddling or supply. Other factors such as history of drug dependence, criminal antecedents (whether the person has been caught previously for self-use or peddling/ sale of drugs) should also be considered.

APPENDIX

Prison Data: District-wise Information from Punjab

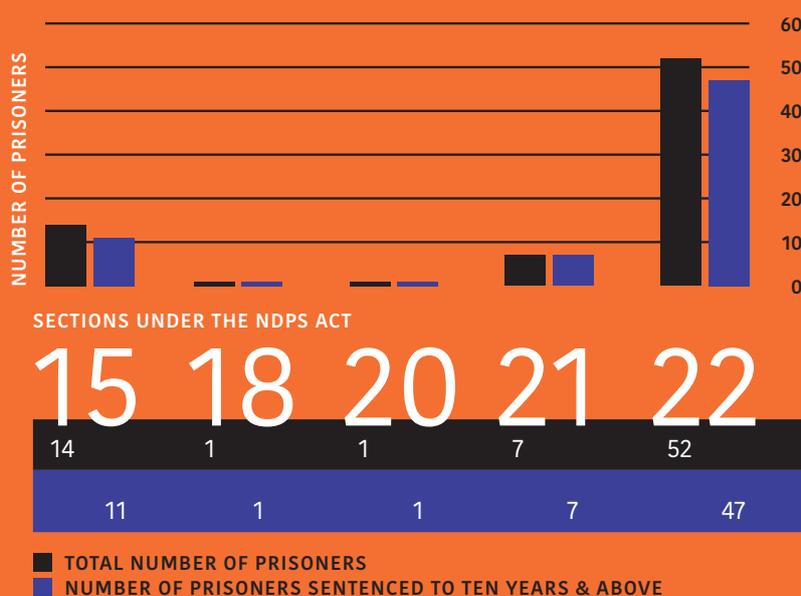
	TOTAL AUTHORISED INTAKE CAPACITY	TOTAL NUMBER OF PRISONERS	TOTAL NUMBER OF CONVICTIONS (OTHER CRIMES COMBINED)	TOTAL NUMBER OF CONVICTIONS (NDPS ACT)	TOTAL NUMBER OF UNDERTRIALS (OTHER CRIMES COMBINED)	TOTAL NUMBERS OF UNDERTRIALS (NDPS ACT)
Central Jails	14,333	17,762	5,140	3,469	5,081	3,936
District Jails	3,508	4,815	1,371	1,058	1,119	1,218
Sub-Jails	788	944	197	81	463	194

Aggregate Data District Jails, Punjab¹²⁷

Barnala

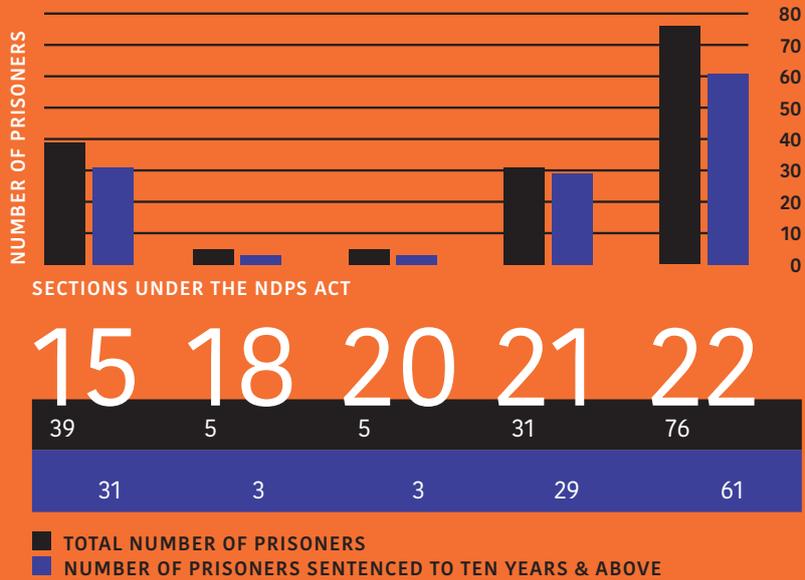
Out of a total of 92 prisoners in the District Jail in Barnala, most prisoners are sentenced for offences under S. 22 of the NDPS Act (69.5% of all cases). Prisoners who are sentenced to ten years and above constitute a high population—approximately 92.18% of total S.22 cases, 100% of total S.21 cases and 83.3% of total S.15 cases.

127. Additional Director General of Police (jails) Punjab, Chandigarh (31 December 2015).



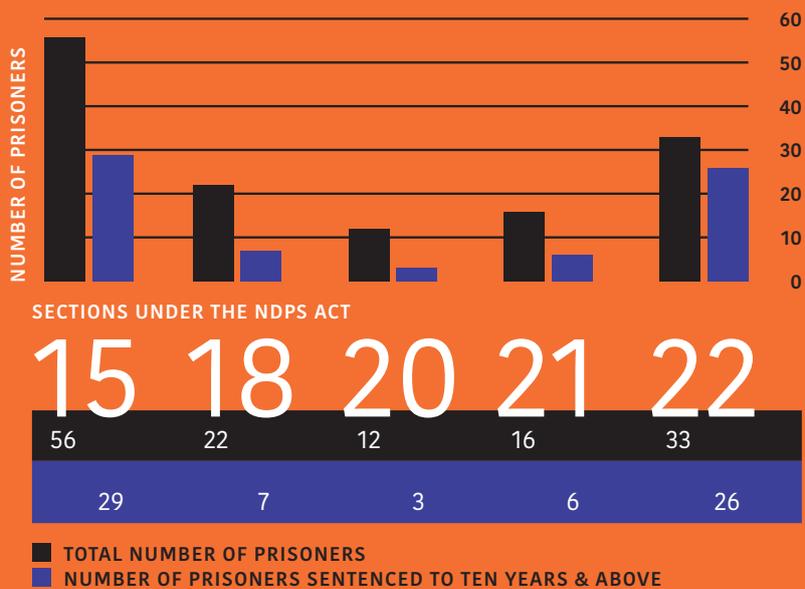
Hoshiarpur¹²⁸

Out of the total number of prisoners, most individuals are in prison for offences under S.22. Approximately 80% of the total cases under S.22 are sentenced to ten years and above. About 93.5% of all cases under S.21 are sentenced to a minimum period of ten years. 25% of the total prison inmates are sentenced under S.15 of the Act.



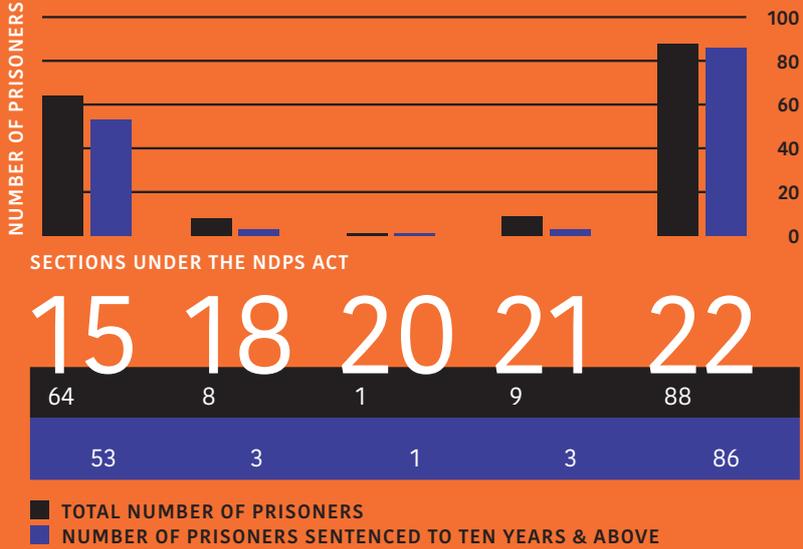
Fazilka

56 prisoners have been sentenced under S. 15 of the Act. 53.57% of all prisoners under S.15 have been sentenced to ten years and above. 78.37% of all prisoners sentenced under S.22 in Fazilka, are serving a term of ten years and above. Above 50% of the total individuals in prison have been sentenced to a period of ten years and above.



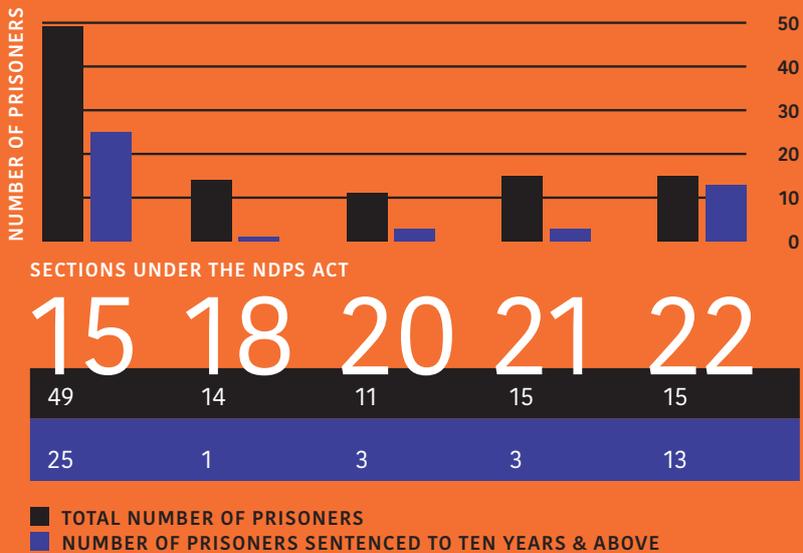
Mansa

There are 170 convicts under the NDPS Act in the District Jail in Mansa. 50.5% of total convicts are in prison for offences under S. 22 of the Act. 97.7% of all convictions under S.22 have been sentenced to ten years and above. 64 out of a total of 170 convicts are sentenced under S. 15 of the Act, and 82.8% of them are sentenced to a period of ten years and above.



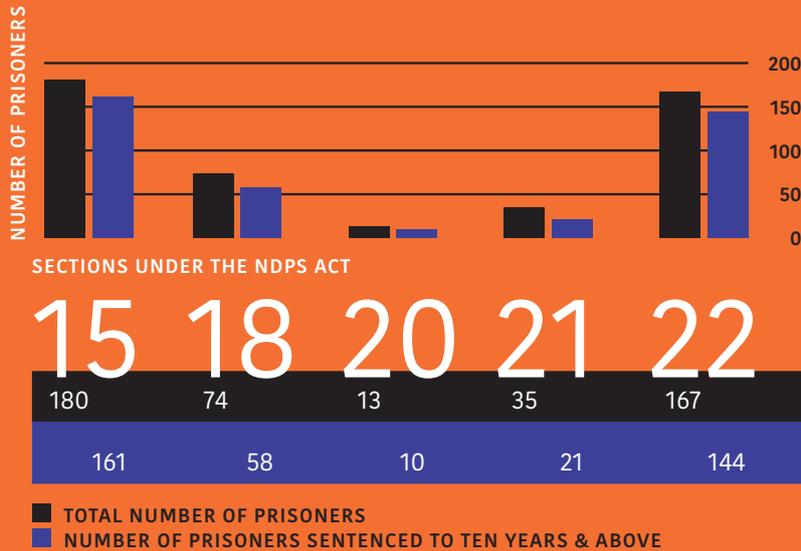
Nabha

Most prisoners in Nabha are sentenced under S. 15 of the NDPS Act. 27 prisoners out of a total of 50 prisoners are sentenced to a period of ten years and above. 87.5% of all prisoners sentenced under S.22 of the Act are serving a term of ten years and above.



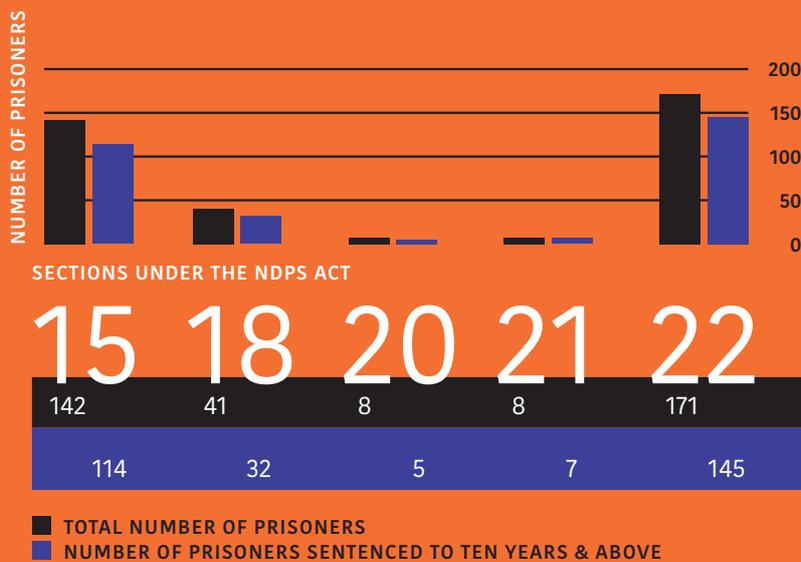
Patiala

Out of the total number of prisoners, most individuals are in prison for offences under S.15 followed by S.22. 89.3% of all cases under S.15 of the Act are sentenced to ten years and above. Further, 85% of all cases sentenced to ten years and above are for offences under S.22 of the Act.



Sangrur

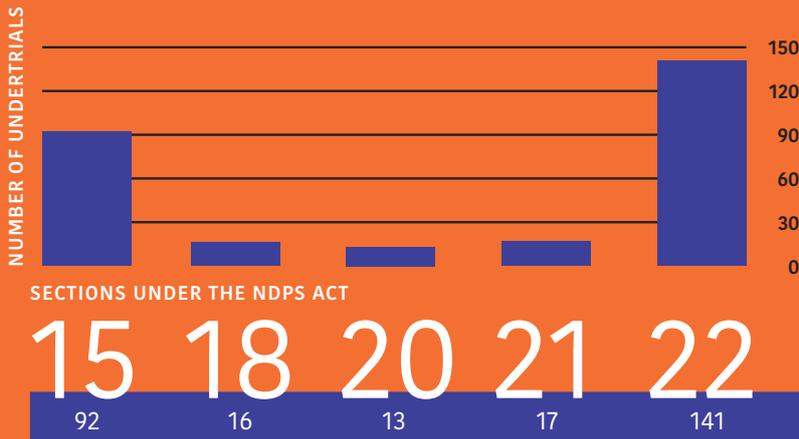
The highest number of prisoners in the District Jail in Sangrur are for offences under Section 22 and S. 15 of the Act. 82.5% of all prisoners under S. 15 and S.22 of the Act have been sentenced to a period of ten years and above.



Under-trial Information

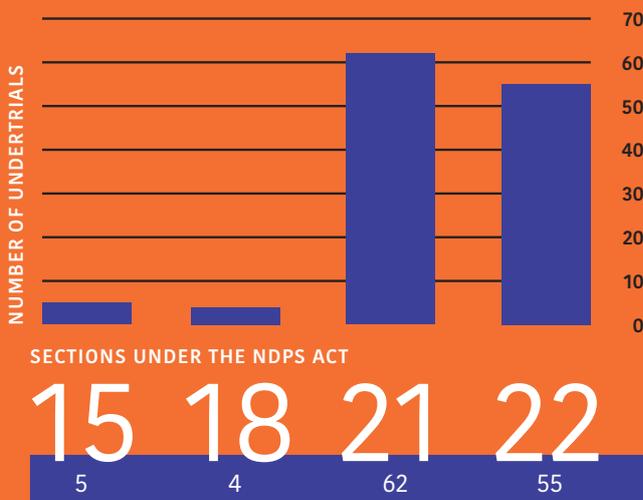
Ludhiana

In Ludhiana, there are 279 undertrials. Almost half of this total under-trial population is serving a term under S.21 and S.22 of the NDPS Act.



Patti (Tarn Taran)

In Patti, there are 240 undertrials, 48.75% of whom are serving a term under S.21 and S.22 of the NDPS Act.



Rupnagar

