

Analyse the Effect of the Mandatory Minimum Sentencing of Drug offenders and the Justice System under the NDPS Act

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Abstract: *Mandatory minimum sentencing is one of the most defining and controversial features of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). Designed as a strict legislative tool to deter drug trafficking and ensure uniformity in punishment, these mandatory minimum provisions significantly restrict judicial discretion and impose severe penalties irrespective of an offender's personal circumstances, role, or level of culpability. This article critically examines the impact of mandatory minimum sentences under the NDPS Act on both offenders and the criminal justice system. It highlights how such rigid sentencing results in disproportionate punishments, increased incarceration, procedural hardships, and limited opportunities for rehabilitation, particularly affecting first-time offenders, drug addicts, and low-level couriers. The article also analyses the broader systemic consequences, including prison overcrowding, heightened burden on courts, prosecutorial overreach, and human rights concerns. Through case law analysis and criminological perspectives, the study argues that while the NDPS Act's objectives are rooted in combating the drug menace, strict mandatory minimums often undermine fairness, proportionality, and individualised justice. The paper concludes by suggesting reforms to create a more balanced and humane sentencing framework.*

Keywords: Mandatory minimum sentence, NDPS Act, offenders, judicial system, sentencing policy, judicial discretion, proportionality, deterrence, rehabilitation, justice system impact, international comparison, legal reforms.

I. INTRODUCTION

The Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) is one of India's most stringent criminal statutes, enacted to curb the rising threat of illicit drug trafficking, consumption, and organised narcotic networks. Recognising the global and domestic challenges posed by drug-related crimes, the legislature adopted an approach rooted in deterrence, severity, and strict procedural control. One of the most defining features of the Act is its mandatory minimum sentencing framework, which prescribes fixed minimum terms of imprisonment and fines for a wide range of offences, particularly those involving commercial quantities of narcotic drugs and psychotropic substances.

Mandatory minimum sentences were introduced with the belief that harsh, uniform punishments would effectively deter traffickers, incapacitate offenders, and protect society from the harmful consequences of drug abuse. However, over the years, the actual operation of these provisions has revealed a complex and often problematic impact on both offenders and the criminal justice system. The inflexible nature of mandatory minimum punishments restricts judicial discretion, prevents individualized assessment of culpability, and often results in disproportionately severe penalties—particularly for first-time offenders, addicts, and low-level couriers who play minimal roles in drug distribution chains.



At the systemic level, the rigid sentencing policy under the NDPS Act contributes to overcrowded prisons, prolonged pre-trial detention due to stringent bail conditions, increased judicial burden, and potential misuse of prosecutorial powers. Moreover, it raises important questions about fairness, proportionality, and the balance between retributive and rehabilitative justice.

Against this backdrop, this article examines the effects of mandatory minimum sentences under the NDPS Act, exploring their implications for offenders, courts, law enforcement agencies, and the broader justice system. Through doctrinal analysis, case law study, and criminological insights, the paper critically evaluates whether the current sentencing framework under the NDPS Act successfully achieves its intended objectives or whether reform is necessary to align the law with constitutional principles and contemporary criminal justice standards.

II. MANDATORY MINIMUM SENTENCES UNDER THE NDPS ACT: CONCEPT AND LEGAL FRAMEWORK

The Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) was enacted as a comprehensive legislation to combat the growing menace of drug trafficking and abuse. Unlike traditional criminal laws that provide judges wide discretion in sentencing, the NDPS Act is built on a punitive and deterrent model, embedding mandatory minimum sentences for most offences. This design reflects the legislature's intention to ensure certainty, uniformity, and severity of punishment, especially for offences involving commercial quantities and organised trafficking networks.

Concept of Mandatory Minimum Sentencing under the NDPS Act

Mandatory minimum sentencing refers to legislatively prescribed minimum penalties that courts must impose, irrespective of mitigating circumstances or the personal factors of the offender. Judges are prohibited from awarding a punishment lower than the statutory minimum, even if the facts justify leniency.

Under the NDPS Act, this concept serves several legislative purposes:

Deterrence : Harsh minimum terms aim to deter potential traffickers.

Incapacitation : Long periods of imprisonment prevent offenders from re engaging in drug crimes.

Uniformity : Ensures consistent sentencing across courts.

Retribution : Expresses societal condemnation of drug-related offences.

However, these objectives often conflict with the need for proportionality and individualized sentencing, which forms the basis of modern criminal jurisprudence.

Legal Framework Governing Mandatory Minimum Sentences

The NDPS Act establishes a structured and quantity-based sentencing system. The key components are as follows:

Quantity-Based Classification (Post-2001 Amendment)

The 2001 amendment introduced a more nuanced sentencing framework by classifying substances into:

1. Small Quantity
2. Intermediate Quantity (More than small but less than commercial)
3. Commercial Quantity

This classification determines the applicable mandatory minimum penalty.

Sentencing Provisions

1. Offences Involving Small Quantity (Section 21, 22, 23, etc.)

Punishment: Up to 1 year, or fine, or both.

No mandatory minimum applies here.

Concept of leniency exists but rarely used due to strict procedural requirements.

2. Intermediate Quantity (More than Small but Less than Commercial)



Mandatory Minimum: 1 year rigorous imprisonment.

Maximum: 10 years.

Judicial discretion exists only within this range.

3. Commercial Quantity (Major Trafficking Offences)

Mandatory Minimum: 10 years rigorous imprisonment.

May extend to 20 years.

Fine: Minimum ₹1 lakh, extendable to ₹2 lakh or more.

This is the most significant mandatory minimum category under NDPS.

Key sections:

Section 21 - Manufactured drugs

Section 22 - Psychotropic substances

Section 23 – Illegal import/export

Section 25 – Allowing premises for drug offences

Section 27A – Financing illicit traffic & harbouring offenders All prescribe stringent mandatory minimums.

Section 32B – Aggravating Factors in Sentencing

Section 32B lists aggravating circumstances such as use of violence, use of minors, or involvement of organised drug networks. However, no mitigating factors are included, reinforcing rigidity in sentencing.

Strict Bail Conditions Linked to Mandatory Sentencing (Section 37)

Mandatory minimum sentences are closely tied to Section 37, which imposes stringent bail restrictions, especially in offences involving commercial quantity.

Bail cannot be granted unless:

1. The court believes the accused is not guilty, and
2. The accused is not likely to commit an offence while on bail.

This elevates mandatory sentencing to a pre-conviction stage, creating long periods of undertrial detention.

Special Provisions for Repeat Offenders (Section 31 & 31A)

Section 31: Enhanced mandatory minimums for repeat offenders—double the punishment.

Section 31A: Earlier provided for death penalty for repeat offenders in commercial quantity; amended in 2014, making it discretionary.

These provisions further intensify the severity of the legal framework.

III. EFFECTS OF MANDATORY MINIMUM SENTENCES ON OFFENDERS

Mandatory minimum sentences under the NDPS Act significantly influence the lives, rights, and future prospects of offenders. The rigidity of the punishment structure, coupled with the severe nature of NDPS offences, produces a range of direct and indirect consequences. These effects are often harsh, long-lasting, and sometimes disproportionate to the offender's actual culpability.

Disproportionate Punishment

One of the most significant effects is the imposition of excessively harsh punishment, even in cases involving:

First-time offenders

Addicts or dependent users

Low-level couriers

People unaware of the nature or quantity of substances they carried

For commercial quantity offences, a minimum of 10 years of rigorous imprisonment must be imposed, even when the offender's role is minimal. This often leads to sentences that do not match the offender's true responsibility.



Elimination of Judicial Discretion

Mandatory minimum sentences remove or severely limit the judge's ability to consider:

Age

Socio-economic background

Mental illness or addiction

Minor role in the offence

Lack of prior criminal record

As a result, sentencing becomes mechanical, ignoring the principle of individualised justice. Offenders who deserve leniency are treated the same as hardened traffickers.

Increased Incarceration and Long-Term Imprisonment

Long mandatory terms lead to:

Prolonged incarceration

Delayed release

Minimal chances of probation or early remission

Offenders often spend the entire minimum period in prison, regardless of conduct or rehabilitation potential. This increases psychological distress, including depression, anxiety, hopelessness, and institutionalisation.

Impact on Drug Addicts and Vulnerable Groups

The NDPS Act does not sufficiently differentiate between:

Traffickers

Addicts

Coerced participants

Women used as carriers

Poor individuals manipulated by drug networks

Drug-dependent offenders are pushed into prisons instead of treatment centres. This worsens addiction and increases recidivism, as they receive little psychological or medical support inside prisons.

Social and Family Consequences

Long mandatory sentences disrupt family structures. Offenders face:

breakdown of marriages

Loss of parental rights or separation from children

Social stigma and exclusion

Financial ruin due to long absence from the workforce

After release, reintegration becomes extremely difficult.

Increased Risk of Recidivism

Instead of deterring crime, long sentences may increase the chances of reoffending due to:

Prison radicalisation

Contact with organised drug networks

Lack of rehabilitation programmes

Unemployment after release

Societal rejection

Mandatory imprisonment can convert minor offenders into hardened criminals.



Undertrial Hardship Due to Bail Restrictions

Because mandatory minimum offences often involve commercial quantities, Section 37 makes bail extremely difficult.

Thus, even before conviction:

Offenders spend years as undertrials

Experience harsh prison conditions

Face delays due to backlogged courts

Lose employment and family support

This pre-trial imprisonment is itself a severe punishment.

Economic and Livelihood Impact

Mandatory long-term sentences result in:

Loss of job or income

Inability to support families

Permanent criminal record

Long-term unemployment

Reduced social mobility After release, offenders struggle to find work due to the stigma of NDPS conviction.

Psychological Trauma Offenders face:

Depression

Hopelessness

Identity crisis

Suicidal tendencies

Trauma from prolonged incarceration

Such psychological harm is amplified for young offenders and addicts.

Lack of Rehabilitation Opportunities

Mandatory minimum sentencing leaves no room for alternatives like:

Community service

Counselling

Probation

De-addiction treatment

Offenders are treated as criminals rather than individuals needing reform, undermining the rehabilitative goals of criminal justice.

IV. EFFECTS OF MANDATORY MINIMUM SENTENCES ON THE JUSTICE SYSTEM UNDER THE NDPS ACT

The mandatory minimum sentencing regime under the NDPS Act has far reaching consequences for the functioning, efficiency, and fairness of the criminal justice system. While it was introduced to create uniformity and deterrence, its practical impact has generated significant challenges within courts, prisons, and law-enforcement institutions. The following key effects illustrate how the justice system is shaped by these rigid statutory prescriptions:

Reduced Judicial Discretion

Mandatory minimum sentences severely restrict the ability of judges to tailor punishment according to the individual circumstances of a case. Judges cannot consider factors such as age, background, role in the crime, addiction status, or socio-economic vulnerability. Even minor or peripheral offenders receive the same minimum punishment as hardened traffickers if the quantity falls within the same category. This undermines the principle of proportionality and diminishes the judiciary's role in ensuring fair sentencing.



Increased Burden on Courts

The stringent nature of sentencing often results in the following:

Rise in contested trials: Accused persons are less willing to plead guilty because the minimum punishment is harsh.

Delay in disposal of cases: Courts experience high pendency in NDPS matters, especially in Special Courts.

Complex procedural requirements (like Section 42, 50, 57 compliance) lead to frequent litigation on procedural lapses.

Thus, the mandatory minimum system indirectly contributes to judicial backlog.

Strengthening of Prosecutorial Power

Mandatory minimums enhance the influence of the prosecution because:

They control the charge framing, and the quantity of drugs alleged determines the severity of punishment.

A minor alteration in quantity classification (small, intermediate, commercial) dramatically affects the sentence. 9 This creates a risk of overcharging or misuse, especially when procedural safeguards are weak.

The imbalance between prosecution and defence becomes more pronounced.

Overcrowding of Prisons Under the NDPS Act:

Bail is extremely difficult (Section 37), leading to high numbers of undertrial prisoners.

Mandatory minimum punishments ensure long periods of imprisonment.

Addicts and first-time offenders who would benefit from treatment are placed in prison instead. This increases pressure on the prison system and obstructs rehabilitation goals.

Reduced Scope for Reformatory Justice

Mandatory minimums conflict with modern criminological principles:

Judges cannot divert offenders to rehabilitation programs even when drug dependency is proven.

The justice system becomes more retributive than reformatory.

Opportunities for community service, counselling, or probation become nearly impossible in NDPS cases.

As a result, the justice system loses flexibility to address root causes of drug related offences.

Inconsistent Application Due to Technical Acquittals

Because punishment is extremely high, courts often strictly scrutinize procedural compliance. Small mistakes in search, seizure, or documentation frequently lead to acquittals. This creates inconsistency: hardened traffickers may go free, while lesser offenders get harsh punishments when procedural compliance is perfect. Thus, justice outcomes become dependent more on procedure than on culpability.

Negative Impact on Case Management and Resources

Special NDPS Courts must prioritise these matters, diverting resources from other criminal cases. Forensic laboratories face pressure to test samples quickly since quantity determines the sentence. High caseloads burden public prosecutors and defence counsel, affecting fairness and efficiency. The entire justice system experiences resource strain due to the mandatory minimum regime.

Human Rights and Constitutional Concerns

Mandatory minimums under the NDPS Act raise several systemic concerns:

Violation of Article 14 due to disproportionate punishment.

Challenges under Article 21 regarding fair trial, bail, and sentencing.

Concerns about arbitrary outcomes and lack of judicial oversight in sentencing. These systemic issues reflect deeper tensions between strict drug laws and constitutional justice.

V. JUDICIAL ATTITUDE AND CASE LAW ON MANDATORY MINIMUM SENTENCES UNDER THE NDPS ACT

The judiciary has played a crucial role in interpreting the NDPS Act's mandatory minimum sentencing framework. Courts have consistently recognised the seriousness of drug offences but have also expressed concerns about the rigidity, proportionality, and fairness of mandatory minimum punishments. Judicial attitude in this area reflects a balance between the need for deterrence and the protection of constitutional rights.



Important Case Laws

State of Punjab v. Baldev Singh (1999)

Judicial Attitude: The Supreme Court held that strict compliance with search and seizure safeguards (especially Section 50) is necessary given the Act's harsh penalties.

Relevance to Mandatory Minimums:

The Court reasoned that because punishments are extremely severe, procedural guarantees must be interpreted in favour of the accused. This demonstrates a cautious judicial attitude: mandatory minimums require stronger protection of rights.

Tofan Singh v. State of Tamil Nadu (2020)

Judicial Attitude:

The Supreme Court held that confession made to an NDPS officer is not admissible as evidence (NDPS officers are "police officers").

Link to Sentencing:

The ruling protects accused persons from being convicted solely on confessional statements that could lead to heavy mandatory minimum sentences. Courts show commitment to fair procedure over harsh punishment.

E. Micheal Raj v. Intelligence Officer, Narcotics Control Bureau (2008)

Issue: Whether the weight of the neutral substance mixed with the drug should be counted to determine quantity.

Holding: Only the actual drug content should be considered when deciding whether the offence involves small, intermediate, or commercial quantity.

Effect: This ensures that mandatory minimum sentences are not applied unfairly because of adulteration. This case shows judiciary's inclination toward proportionality.

Hira Singh v. Union of India (2020–21) (Constitution Bench)

Judicial Attitude: The Court reversed Michael Raj, holding that the entire mixture (drug + neutral substance) should be considered for quantity determination.

Effect on Sentencing:

This strengthened the strict nature of NDPS sentencing, reflecting a deterrent oriented judicial attitude. Yet, the Court acknowledged that the legislature intended tough action against drug trafficking.

Union of India v. Kuldeep Singh (2004)

Judicial Attitude:

The Court held that mandatory minimum sentences under the NDPS Act are constitutional and do not violate Articles 14 or 21.

Reasoning:

Parliament has authority to prescribe minimum punishments for serious crimes.

Effect: The judiciary respects legislative intent in applying mandatory minimum sentencing.

VI. INTERNATIONAL COMPARATIVE ANALYSIS: MANDATORY MINIMUM SENTENCING FOR DRUG OFFENCES

United States - Strong Mandatory Minimum Legacy (Federal & State Variation)

Model: Historically heavy reliance on quantity-based mandatory minimums at the federal level (and in many states) for trafficking and large-scale offences.

Effects observed:

Substantial increase in incarceration rates and prison costs.

Disproportionate impacts on marginalized communities.

Large prosecutorial power because charging choices determine exposure to minimums.

Growth of plea bargaining; some innocent defendants plead guilty to avoid extreme mandatory terms.



Policy shifts in recent decades toward reform (reduced mandatory ranges, retroactive relief in some cases), but legacy effects remain.

United Kingdom - Sentencing Guidelines and Judicial Discretion

Model: No broad mandatory minimums for drug offences; sentencing guided by statutory ranges and sentencing councils. Judges can tailor penalties according to role, harm, and mitigation.

Effects observed:

Greater scope for individualized, proportionate sentences.

Sentencing consistency achieved via guidelines rather than hard minima.

Easier integration of diversion and rehabilitation for low-level offenders.

Canada - Discretion with Emphasis on Harm Reduction

Model: Criminalization for trafficking remains, but courts have substantial discretion; government policies increasingly emphasise public health and harm reduction.

Effects observed:

Use of conditional sentences, diversion, and treatment options for dependent users.

Lower incarceration rates for low-level users compared with mandatory minimum jurisdictions.

Portugal - Decriminalisation and Public-Health Focus

Model: Possession for personal use is decriminalised (administrative sanctions, not criminal conviction); trafficking remains criminal.

Effects observed:

Reduced stigma for addicts, easier access to treatment.

Declines in drug-related deaths and HIV transmission have been reported in policy analyses.

Criminal justice resources reallocated from users to organised traffickers.

VII. SUGGESTIONS

1. Allow limited judicial discretion to reduce sentences below the mandatory minimum in exceptional cases (first-time offenders, addicts, minor role).
2. Differentiate between users and traffickers, providing treatment for addicts instead of imprisonment.
3. Relax strict bail conditions under Section 37 for small and intermediate quantity offences.
4. Improve procedural safeguards (proper search, seizure, sampling, chain of custody) to prevent wrongful convictions.
5. Adopt sentencing guidelines to ensure proportionality without removing deterrence for major traffickers.
6. Strengthen rehabilitation and de-addiction programmes to reduce recidivism.
7. Collect and use data to evaluate the actual impact of mandatory minimums on crime control and reform policies accordingly

VIII. CONCLUSION

Mandatory minimum sentencing under the NDPS Act was introduced with the aim of creating strong deterrence against drug trafficking and ensuring uniformity in punishment. While the law has succeeded in signalling a tough national stance against narcotic offences, its rigid structure has produced several unintended consequences for offenders and the justice system. The absence of judicial discretion often leads to disproportionate punishment, particularly for addicts, couriers, and first-time offenders who play a minimal role in the drug trade. This rigidity has also contributed to overcrowded prisons, prolonged undertrial detention due to stringent bail provisions, and increased pressure on courts and law-enforcement agencies. Judicial decisions reflect a cautious balance—courts uphold the legislative intent of deterrence but simultaneously insist on strict procedural compliance to prevent injustice. Comparative international experience further demonstrates that while strong penalties are necessary for organised trafficking, effective drug policy must also incorporate rehabilitation, proportionality, and flexible sentencing mechanisms. Overall, the impact of mandatory minimums under the NDPS Act reveals the need for calibrated reform. A more balanced framework—one



that retains severe penalties for major traffickers while allowing discretion, treatment options, and role-based sentencing for lesser offenders—would better serve the goals of justice, efficiency, and human rights. Such reforms would strengthen both the fairness and credibility of India’s drug control regime while maintaining its commitment to public safe

REFERENCES

1. Narcotic Drugs and Psychotropic Substances Act, 1985. Government of India.
2. Union of India v. Kuldeep Singh, (2004) 13 SCC 776 (Supreme Court of India).
3. E. Micheal Raj v. Intelligence Officer, Narcotic Control Bureau, (2008) 5 SCC 161 (Supreme Court of India).
4. Harjit Singh v. State of Punjab, (2011) 4 SCC 441 (Supreme Court of India).
5. Hira Singh v. Union of India, (2020) 20 SCC 272 (Supreme Court of India).
6. Tripura High Court. (2019). Judgments relating to sentencing proportionality under the NDPS Act.
7. Kerala High Court. (2022). Judgments discussing judicial discretion and mandatory minimum sentencing.
8. United Nations Office on Drugs and Crime (UNODC). (2023). World Drug Report. United Nations Publications.
9. Stevens, A. (2019). International approaches to drug sentencing: Comparative perspectives. Oxford University Press.
10. Eastwood, N., Fox, E., & Rosmarin, A. (2016). The limits of mandatory minimum drug sentencing in the United States and Europe. Release Publications

