



**ANNUAL NATIONAL SEMINAR ON THE WORKING OF THE NDPS COURTS IN INDIA**

**13<sup>TH</sup>-14<sup>TH</sup> AUGUST, 2016**

**Session 6: Measures for expediting  
disposal of NDPS cases**

**By**

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**PART 1: THANA SINGH VS. CENTRAL BUREAU OF NARCOTICS**

**CRIMINAL APPEAL NO. 1640 OF 2010**

**PART 2: WORKSHOP ON LEGAL FRAMEWORK TO DEAL WITH DRUG ADDICTION AND**

**DRUG TRAFFICKING**

**2015**

# ADJOURNMENTS

1. No adjournment shall be granted in the narcotic trials. Courts from every level suffer from this problem.
2. Such practice deserves complete abolishment.
3. The legislature enacted a crucial amendment in the form of a fourth provision to Section 309(2) of the code of criminal procedure to tackle the problem but the same awaits notification.
4. Once notified, section 309 will read as follows:-

### 309. Power to postpone or adjourn proceedings. (old provision)

(1) In every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody: Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time

- Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing.
- Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.

Explanation 1.- If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2.- The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.

# NEW CHANGES

Provided also that-

(a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

(b) the fact that the pleader of a party is engaged in another Court, shall not be a ground or adjournment;

(c) where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.

# EXAMINATION OF WITNESSES

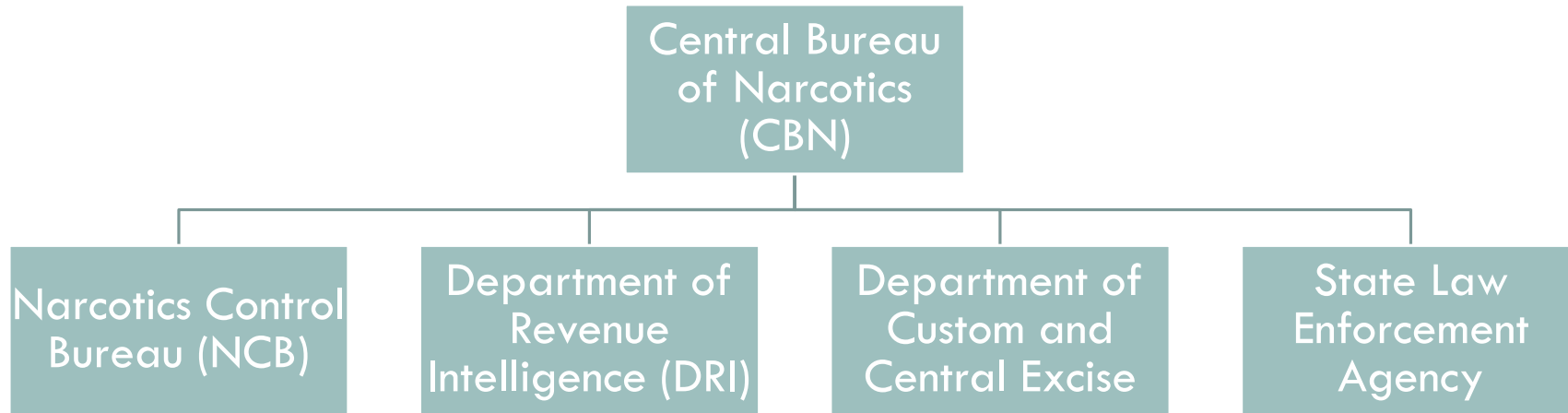
Between harmonizing the rights and duties of the accused and the victim, the witness is often forgotten.

It would be prudent to return to the erstwhile method of holding “session’s trials” i.e. conducting examination and cross-examination of a witness on consecutive days over a block period of three to four days.

This permits a witness to take the stand after making one-time arrangements for travel and accommodation, after which, he is liberated from his civil duties qua a particular case.

Therefore, this Court directs the concerned courts to adopt the method of “session’s trials” and assign block dates for examination of witnesses

The Narcotics Control Board also pointed out that since operations for prevention of crimes related to narcotic drugs and substances demands coordination of several different agencies.



On the completion of investigation for instance, investigating officers return to their parent organizations and are thus, often unavailable as prosecution witnesses. In light of the recording of such official evidence, we direct the concerned courts to make most of Section 293 of the Code of Criminal Procedure, 1973 and save time by taking evidence from official witnesses in the form of affidavits.

# NARCOTICS LABS

Their role in the effective implementation of the mandate of the [NDPS Act](#) is indispensable which is why every state or region must have proximate access to these laboratories so that samples collected for the purposes of the Act may be sent on a timely basis to them for scrutiny.

These samples often form primary and clinching evidence for both the prosecution and the defense, making their evaluation by narcotics laboratories a crucial exercise.



# NUMBERS FOR THE STATE AND REGIONAL FORENSIC SCIENCE LABORATORIES (FSL) ARE AS FOLLOWS:-

Serial Number	Name of the State	Main State FSL	Regional FSL
1	Arunachal Pradesh	1	0
2	Assam	1	0
3	Bihar	1	1
4	Chattisgarh	1	2
5	Goa	Being Established	0
6	Gujarat	1	5
7	Haryana	1	2
8	Himachal Pradesh	1	0
9	Jammu & Kashmir	1	1
10	Jharkhand	1	0
11	Andhra Pradesh	1	9

Serial Number	Name of the State	Main State FSL	Regional FSL
12	Karnataka	1	4
13	Kerala	1	2
14	Madhya Pradesh	1	3
15	Maharashtra	1	4
16	Manipur	1	0
17	Meghalaya	1	0
18	Mizoram	1	0
19	Nagaland	1	0
20	Orissa	1	2
21	Punjab	1	0
22	Rajasthan	1	3
23	Sikkim	0	1
24	Tamil Nadu	1	9
25	Tripura	1	0

Serial Number	Name of the State	Main State FSL	Regional FSL
26	Uttar Pradesh	1	2
27	Uttarakhand	1	0
28	West Bengal	1	2

### UNION TERRITORIES

Serial No.	Name of the State	Main State FSL	Regional FSL
1	Andaman and Nicobar Islands	1	0
2	Chandigarh	0	0
3	Dadra & Nagar Haveli	0	0
4	Daman & Diu	0	0
5	Lakshadweep	0	0
6	NCT of Delhi	1	0
7	<b>Puducherry</b>	<b>0</b>	<b>0</b>

# RE-TESTING PROVISIONS

The NDPS Act itself does not permit re-sampling or re-testing of samples.

Yet, there has been a trend to the contrary; NDPS courts have been consistently obliging to applications for re-testing and re-sampling.

These applications add to delays as they are often received at advanced stages of trials after significant elapse of time.

NDPS courts seem to be permitting re-testing nonetheless by taking resort to either some High Court judgments [See: State of Kerala Vs. Deepak. P. Shah]; [Nihal Khan Vs. The State (Govt. of NCT Delhi) ]

[Sections 79](#) and [80](#) of the NDPS Act which permit application of the [Customs Act, 1962](#) and the Drugs and [Cosmetics Act, 1940](#).

[Under the NDPS Act](#), re-testing and re-sampling is rampant at every stage of the trial contrary to other legislations which define a specific time-frame within which the right may be available.

The Legislature, unlike for the [NDPS Act](#), enacted [Section 25\(4\)](#) of the Drugs and [Cosmetics Act, 1940](#), [Section 13\(2\)](#) of the Prevention of Food Adulteration Act, 1954 and Rule 56 of the Central Excise Rules, 1944, permitting a time period of thirty, ten and twenty days respectively for filing an application for re- testing

Therefore, keeping in mind the array of factors discussed above, the court direct that, after the completion of necessary tests by the concerned laboratories, results of the same must be furnished to all parties concerned with the matter

Any requests as to re-testing/re-sampling shall not be entertained under the [NDPS Act](#) as a matter of course.

These may, however, be permitted, in extremely exceptional circumstances, for cogent reasons to be recorded by the Presiding Judge.

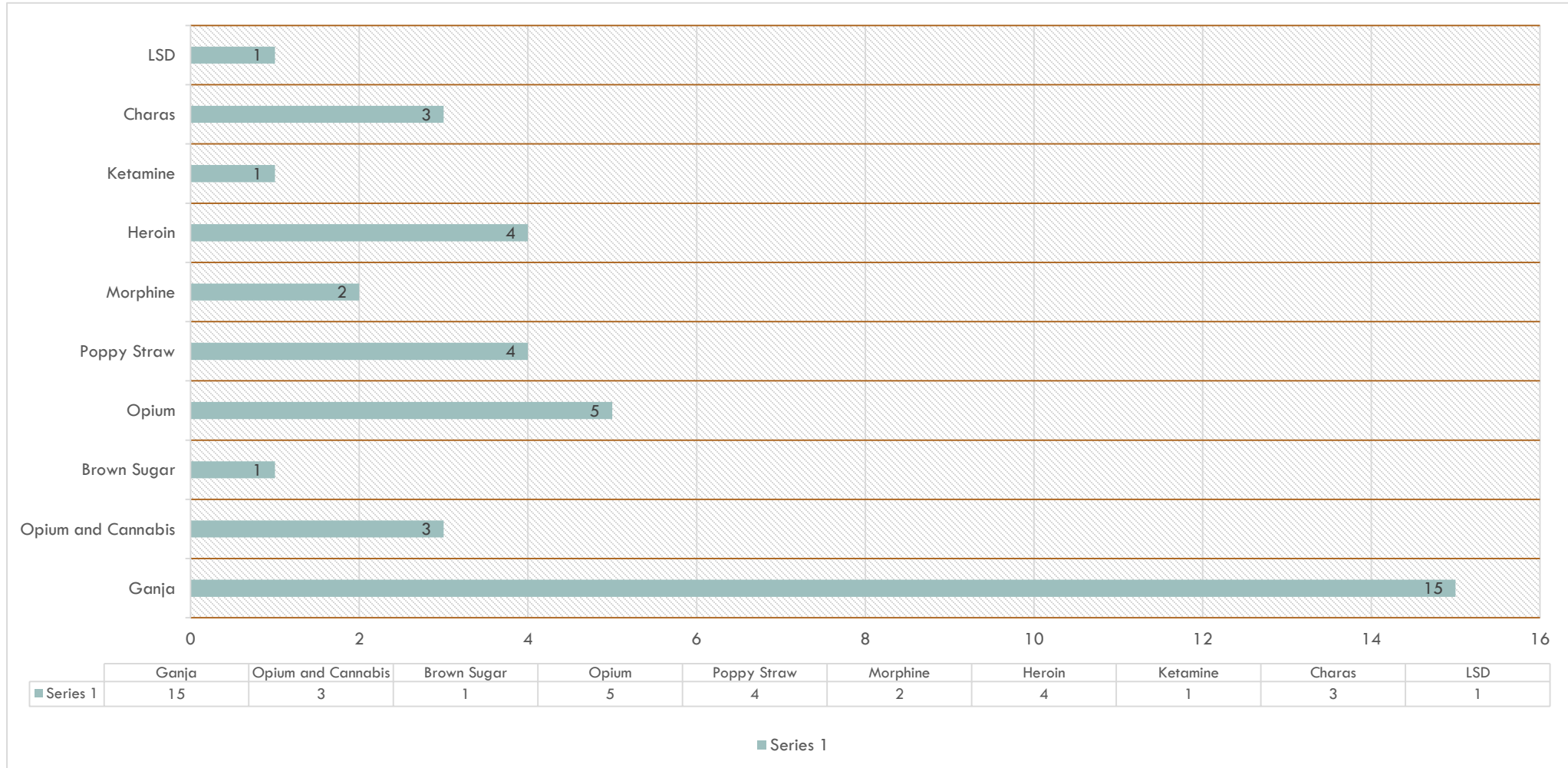
An application in such rare cases must be made within a period of fifteen days of the receipt of the test report; no applications for re-testing/re-sampling shall be entertained thereafter.

However, in the absence of any compelling circumstances, any form of re-testing/re-sampling is strictly prohibited under the [NDPS Act](#).



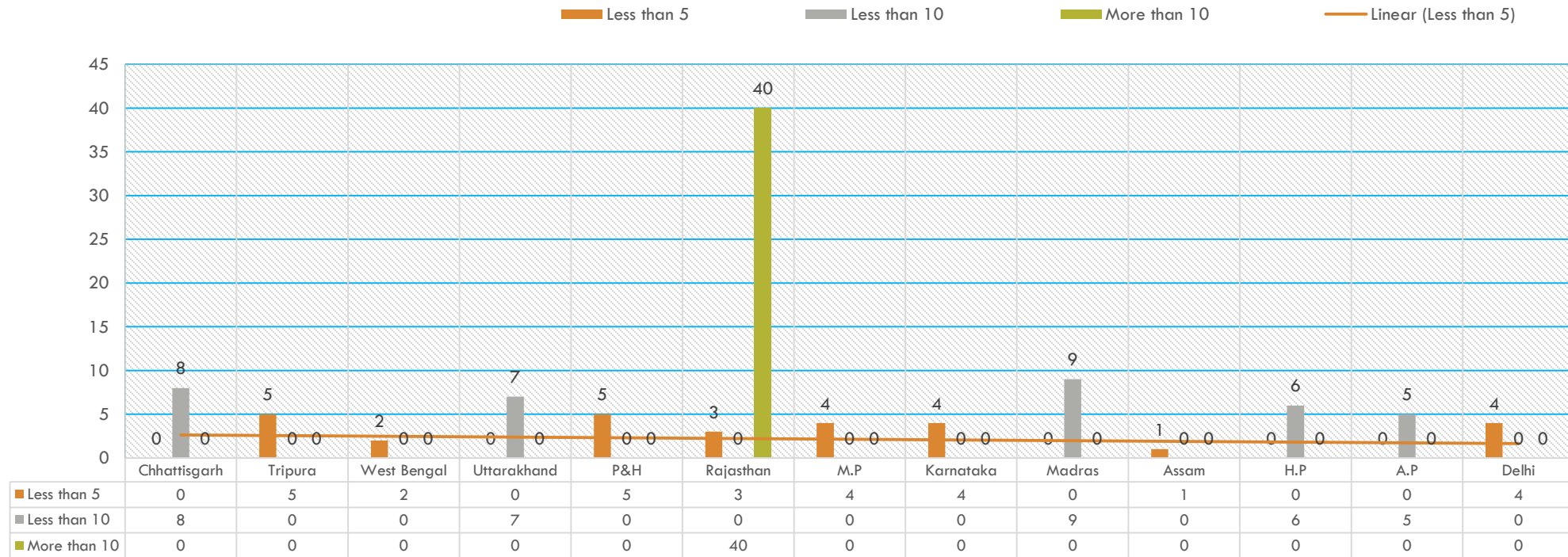
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## ***WHICH TYPE OF NARCOTIC IS GENERALLY CONFISCATED AND BROUGHT BEFORE YOUR COURT?***





## **AVERAGE NUMBER OF CASES RECEIVED AND REGISTERED IN YOUR COURT PER MONTH**



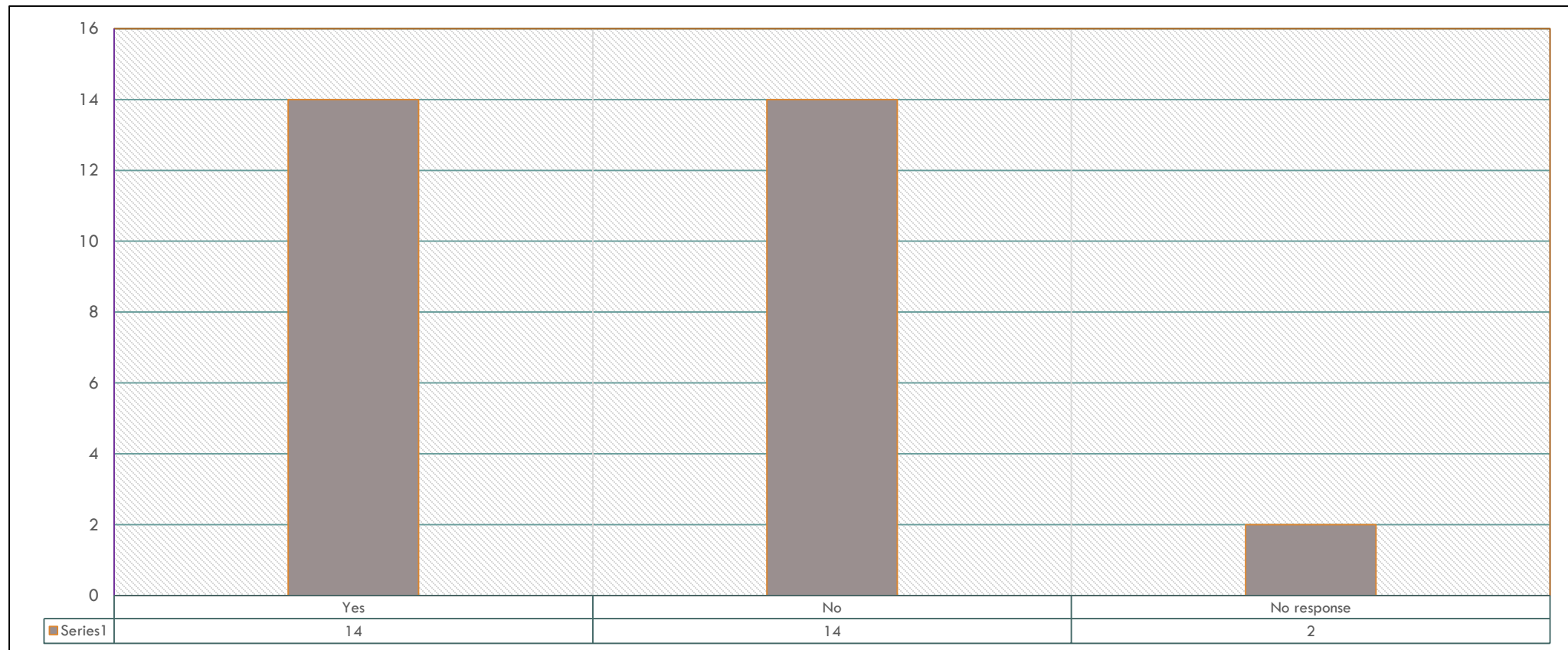
## HOW MANY UNITS ARE GIVEN TO YOU FOR THE FOLLOWING

Name of High Court	Deciding one full NDPS trial	Interim application under NDPS trial	Bail matter under NDPS trial	Examination of witness under the NDPS trial
Chhattisgarh	10 units	Nil	0.5 units	Nil
Tripura	5 units	Nil	1 unit	Nil
West Bengal	10 units	1/4 <sup>th</sup>	1/4 <sup>th</sup>	8 witnesses – 6 units 6 witnesses – 4 units 4 witnesses - 3 units Below 3 – 1 unit
Punjab & Haryana	3 unit	Nil	Nil	Nil
Uttarakhand	2.5 Unit	Nil	Nil	Nil
Jharkhand	Nil	Nil	Nil	Nil
Patna	Not applicable	Not applicable	Not applicable	Not applicable
Madhya Pradesh	10 unit	Nil	1/5 <sup>th</sup> unit of 5 bail case	Nil
Karnataka	0.25 unit	Nil	Nil	Nil
Madras	2 unit	50 cases = 1 unit	50 cases = 1 unit	Nil
Gujrat	4 unit	Nil	0.20	Nil
Assam	6 unit	Nil	10 Application 1 unit	Nil
Himachal Pradesh	6 unit	1/4 <sup>th</sup> unit	1/4 <sup>th</sup> unit	Nil
Delhi	8 unit	Nil	2 unit for 10 bail application	Nil

***IN YOUR COURT WHAT IS THE AVERAGE AGE OF PERSONS CAUGHT FOR DRUG TRAFFICKING***

Serial No	High Court	Average age of persons caught for drug trafficking
1	Chhattisgarh	25-30 years
2	Tripura	25-45 years
3	West Bengal	35-45 years
4	Uttarakhand	20-35 years
5	Punjab & Haryana	25-30 years
6	Rajasthan	30-35 years
7	Madhya Pradesh	25-40 years
8	Karnataka	35-45 years
9	Uttar Pradesh	35-40 years
10	Orissa	Around 35 years
11	Mumbai	25-40 years
12	Assam	35 years
13	Himachal Pradesh	25-35 years
14	Andhra Pradesh	35-45 years
15	Delhi	35 years

**WHETHER YOU HAVE ENCOUNTERED ANY PROBLEM FROM-INVESTIGATING AGENCIES WHILE ADJUDICATING THE CASE?**





**Thank You**