

DRUNK on POWER



A Study of Excise Policing
in Madhya Pradesh



CRIMINAL JUSTICE & POLICE ACCOUNTABILITY PROJECT

DRUNK ON POWER: EXCISE POLICING IN MADHYA PRADESH



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POLICE ACCOUNTABILITY
PROJECT

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Finally, the struggle against the Excise Act and a Brahminical criminal justice system has been led by the everyday struggle of Vimukta women. This report is a modest attempt to contribute to their relentless resistance.

NOTE ON TERMINOLOGY

In keeping with the anti-caste lens which informs our work, we have chosen to use terms of self-assertion that various marginalised communities have claimed for themselves, viz. Dalit, Adivasi, Bahujan, and Vimukta.

Dalit refers to the most oppressed castes that fall outside the fourfold varna system but are nonetheless subjected to caste system's systemic oppression.

Adivasi refers to the indigenous tribal communities of India that predate the establishment of Brahminical hegemony in the subcontinent.

Bahujan (a term literally meaning the majority of the people) generally refers to all non-dvija (the 'twice-born' uppermost three varnas) communities, though connotations vary based on context.

Vimukta refers to the communities that were branded hereditary criminals under the colonial Criminal Tribes Act, 1871, which was repealed in 1952 and the erstwhile 'criminal' tribes 'de-notified'.

As explained in Chapter 3, constitutional-administrative categories of Scheduled Castes ('SC'), Scheduled Tribes ('ST'), and Other Backward Classes ('OBC') often vary from how communities self-identify, and said categories have only been relied upon when an argument or claim is made within such an administrative context. The General category predominantly refers to oppressor caste groups. However, some Vimukta communities have been wrongly classified as General by the state.

TABLE OF CONTENTS

Acknowledgement

Note on Terminology

List of Figures

Foreword

Executive Summary

Summary of Findings 1 – 7

1 Introduction 9 – 10
What may excise policing reveal about the criminal justice system? 9

2 The Historical Framework and Political Economy of the Excise Regime 12 – 21
i. Colonial imposition of capitalist frameworks to alcohol production 12
ii. Endorsement of prohibition by the nationalist movement 13
iii. Concerns raised by women's movements and Adivasi communities 15
iv. The Madhya Pradesh Excise Act, 1915 15
v. The monopoly of the excise license regime 17
Case Study: "[T]he entire area is infested with tribals who run liquor shops" 20

3 Methodology 23 – 29
i. Statistical study to judge police efficiency 23
ii. Upturning the gaze of analysis for police data 23
iii. The challenges of mapping individual's social locations and our methodology 24
iv. Methodology for studying arrest records 28
v. The monopoly of the excise license regime 28

4 Police Preoccupation with Excise-Related Arrests 31 – 51
i. The proportion of excise-related arrests 31
ii. A closer look at districts 36
iii. Serious Offences 41

5	Caste and Gender Profiles of the Policed	53 – 76
	i. Historical criminalisation of Vimukta communities	53
	<i>Case Study: Casteist policing of the Kanjar community</i>	54
	ii. Over-representation of marginalised castes	56
	iii. Criminal Women – Analysis from FIRs	66
	iv. Intersection of caste and gender in narratives of criminality	67
	<i>Case Study: Ghamapur Police Station & the Kuchbandiya community</i>	71
	<i>Case Study: Kuchbandiya woman & bail orders</i>	72
	v. Notes on other demographic identifiers – religion & age (FIR analysis)	75
6	The Narratives of Criminality	78 – 88
	i. Narratives of criminality under Section 34 of the MP Excise Act	78
	<i>Case Study: False cases, demands for bribe and arbitrary policing</i>	82
	ii. Incorrect invocation of Section 36-B of the MP Excise Act	83
	iii. Prominence of Mukhbirs	85
	iv. Stock seizure witnesses	85
	<i>Case Study: An 'invisible' witness</i>	88
7	Criminalising Trivial Quantities of Country Liquor	89 – 93
	i. Volume of alcohol criminalised	89
	ii. Small pockets – Value of the alcohol criminalised	92
8	Other Findings from the FIRs	95 – 98
	i. Spatial dynamics of casteist policing	95
	ii. Bail encumbrances	96
	<i>Case Study: Inaccessible bail & long incarceration</i>	97
	iii. Recurring accused	98
9	iv. Time of offence	98
	Conclusion	100 – 101
	Annexures	102 – 109
	1. Sample FIR under Section 34 (1)	102
	2. Sample FIR under Section 36-B	103
	3. Section 34 and 36 of the MP Excise Act	104
	4. Community Classification list used in our methodology to identify members belonging to Dalit, Adivasi and Vimukta communities	107
	5. List of corporations with bottling licenses, supply areas and names of founder or promoters families	109
	Endnotes	110 – 117

LIST OF FIGURES

Figure 1.A: Total number of arrests under the Excise Act 2018-20	32
Figure 1.B: Total Number of arrests under the Excise Act 2018-20	33
Figure 2.A: Proportion of Excise Arrests among total arrests 2018-20	34
Figure 2.B: Proportion of Excise Arrests among total arrests 2018-20	35
Figure 3: District-wise proportions of the total excise arrests in MP	39
Figure 4: Police stations in each district with the highest proportion of excise arrests	40
Figure 5: Proportion of arrests under various sections of the Excise Act	42
Figure 6.A: Sections of the Excise Act invoked for arresting accused persons (year wise, 2018 - 2020)	43
Figure 6.B: Sections of the Excise Act invoked for arresting accused persons (overall, 2018 - 2020)	43
Figure 7.A: Median proportion of arrests under various sections of the Excise Act (2018-20)	44
Figure 7.B: Median proportion of arrests under various sections of the Excise Act 2018-20	44
Figure 8: Number of Arrests for bailable offences under Section 34(1) of the Excise Act	46
Figure 9: Number and Proportion of Arrests for offences under Section 34 and other sections of the Excise Act	47
Figure 10: Number and Proportion of Arrests for offences under Sections 49-A and 34(2) of the Excise Act	48
Figure 11: Number of Arrests for offences under Sections 34, 34(1), 34(2), 49-A and other sections of the Excise Act.	49
Figure 12: Number of Arrests for offences under Sections 34, 34(1), 34(2), 49-A and other sections of the Excise Act (including other IPC and other special Acts)	50
Figure 13.A: Caste locations of the individuals accused in the FIR dataset	58
Figure 13.B: Caste locations of the individuals accused in the FIR dataset	58
Figure 14: Comparison of SC and ST population in districts with number of persons implicated in FIRs who belong to the SC and ST communities (The SC and ST populations in both datasets include the people belonging to Vimukta communities which have been categorised as SC or ST communities by the state.)	59
Figure 15.A & 15.B: Caste locations of individuals arrested under the Excise Act	61
Figure 16.A & 16.B: Caste locations of individuals arrested under the Excise Act [when Vimukta community is subsumed in state administrative categories]	62

Figure 17: Comparison of district-wise SC and ST population with the number of arrested persons belonging to the SC and ST communities. (The SC and ST populations in both sets include the Vimukta communities that are classified as SC or ST by the state.)	63
Figure 18.A: Comparison of district-wise ST population with the number of arrested persons belonging to the ST community. (The ST population in both sets include the Vimukta communities that are classified as ST by the state.)	64
Figure 18.B: Comparison of district-wise ST population with the number of arrested persons belonging to the ST community. (The ST population in both sets include the Vimukta communities that are classified as ST by the state.)	65
Figure 19: Gender identities of individuals implicated in FIRs across police stations	66
Figure 20: Gender identities of individuals implicated in FIRs across police stations	67
Figure 21.A: Caste location of women implicated in FIRs under the Excise Act	68
Figure 21.B: Caste location of women implicated in FIRs under the Excise Act	69
Figure 22: Age of the individuals implicated for excise related offences in FIRs	76
Figure 23: Frequently used MP Excise Act provisions for registering FIRs	80
Figure 24: Nature of police allegations in FIRs concerning Mahua	84
Figure 25: Police 'recruitment' of Witnesses for search and seizure	86
Figure 26: Quantity of alcohol allegedly found on accused persons	91
Figure 27: Minimum, maximum, average and median values of alcohol seized in FIRs	92
Figure 28: Grant of bail in arrests following the registration of FIRs under the MP Excise Act	96

FOREWORD

The MP Excise Act, 1915 is a seemingly neutral legislation that regulates the import, export, sale and possession of alcohol in Madhya Pradesh, through a license system. Upon scraping the surface of the legislation, the colonial and casteist nature of its enforcement becomes apparent – country liquor is disproportionately targeted, marginalised communities bear the brunt of criminality, and no difference is made by the police between criminalising commercial and non-commercial quantities of alcohol. Moreover, the rent-seeking character of the legislation is conspicuous as fines are sought to be increased through amendments. The vague allegations and standard templates of the FIRs under the Excise Act also reveal the manner in which the police exercise their wide discretionary powers.

As a criminal justice research and litigation intervention representing members of Vimukta communities and other Adivasi communities, we recognised that the Excise Act exploited colonial constructions of criminality and furthered such perceptions by particularly targeting certain groups. In the enforcement of the Excise Act, Vimukta communities continue to be regarded as ‘hereditary criminals’ and the police disproportionately accuses, surveils and regulates individuals, especially women, belonging to this community. The routine nature of violence under the Excise Act even during the 2020 pandemic is evident given the time period of study (2018–2020). During the coronavirus-induced lockdown, the unnecessary and irresponsible incarceration of individuals under the Excise Act likely further impoverished and marginalised these communities, given high prison overcrowding and the associated health risks, the limited functioning of the courts, and the divestment of limited financial resources for hefty fines and court fees (at a time when no daily wage had livelihood).

Through this report, we seek to probe deeper into the Excise Act to examine who is policed and how the carceral system disciplines and punishes marginalised communities. The purpose of our study is to document the arbitrary and casteist nature of arrests and criminalisation under the Excise Act, and to contribute to civil society movements that safeguard the constitutional rights of these communities. Our study seeks to contribute to critical anti-caste and decolonial discourses that explore non-carceral approaches to alcohol regulation. We hope that our study encourages the scrutiny of other seemingly neutral legislations that presently serve as tools of marginalisation.

EXECUTIVE SUMMARY

Our report seeks to examine the criminal justice system through excise policing in Madhya Pradesh ('MP'). We study who is policed, which activities are particularly targeted under the MP Excise Act, 1915 ('Excise Act'), and how narratives of criminality are constructed through the excise regime. This study is especially relevant given the large number of excise-related arrests in MP and the casteist implications of such arrests. In August 2021, the MP Legislative Assembly passed an amendment to the Excise Act to include death penalty and fines of up to ₹50,00,000 for certain offences. An examination of how this legislation is implemented is more crucial now than ever before.

As part of this study, we analysed two sets of data:

5,62,399 arrest records from 20 districts across MP; and

540 randomly-selected First Information Reports ('FIRs') filed under the Excise Act from three districts in MP.

We found that excise related arrests formed over one-sixth of the total number of arrests in MP, and were second only to arrests pertaining to the Indian Penal Code, 1860. The casteist nature of criminalisation under the excise legislation was starkly evident: 56.35% of those arrested belonged to SC (9.87%), ST (21.53%), OBC (15.64%) and Vimukta communities (6.86%); among the 562 accused persons in the FIRs, the SC, ST, OBC and Vimukta communities collectively constituted a majority of the accused, at 14%, 15%, 16% and 11% respectively.

This report finds that the Vimukta Kuchbandhiya community is especially targeted in some districts, and that among Kuchbandhiyas, women are targeted frequently more than men. Of a total of 1,094 excise-related arrests in Ghamapur police station, Jabalpur, 57% involved Kuchbandhiya individuals. Of the 509 women arrested in Ghamapur, 441 were women from the Kuchbandhiya community. Some Kuchbandhiya women had been arrested 23–28 times, demonstrating the strong hold of the myth of the 'historical criminality' of certain communities (previously classified as 'criminal tribes' by the colonial state) on the police's modes of functioning.

The lack of details in the FIRs regarding the specific offences one is implicated under is also a cause for concern. Over 18% of the FIRs studied do not provide details of the clause/s under which the individuals were implicated, leaving the accused at the mercy of unpredictable policing. In some cases, the FIRs merely mention that the accused were found inebriated in a public place; however the police had filed FIRs under Section 36-B for this 'offence'. The FIRs also reveal a template form: beginning with an informant's tip, police officers reaching the spot of the 'crime', and subsequently questioning the accused regarding the licence to sell alcohol. The excessive reliance on the informant ('*mukhbir*') in excise policing raises several concerns about policing and police discretion. Further, since a substantial number of the informants are from the marginalised groups themselves, their work with the police to target fellow community members is likely a cause of conflicts and tensions within the community. The popular imagination of excise-related arrests is critically examined as the study finds that excise policing is most concerned with small volumes, and smaller monetary values, of alcohol. For instance, in most cases for possession and intent to sell alcohol, accused persons were apprehended for alcohol below 5 litre and under ₹1,000 in value.

In some districts, such as Jabalpur, private Bahujan spaces such as individuals' homes became sites of criminality, as arrests were made for *mahua* found in the house. Non-commercial public spaces such as parks and grocery stores in neighbourhoods of marginalised communities were also common sites of criminalisation. This data lends itself to an understanding that the private is forsaken to state surveillance when the space belongs to marginalised individuals.

The study of FIRs found that several marginalised accused persons had been implicated in more than one FIR, further hinting at the colonial legacy of the perception of certain communities as 'criminal tribes'. This phenomenon also raises concerns about the rent-seeking characteristics in the implementation of the excise legislation, as police officials and the lawyers who represent the accused stand to monetarily gain from the legislation's enforcement.

The report is an exercise in exposing the casteist nature of incarceration in seemingly neutral legislation. As mentioned above, a large proportion of individuals criminalised are from marginalised communities, the police rely heavily on informant information rather than factual evidence, and private Bahujan spaces are more likely to be considered criminal. We hope that this report offers a glimpse into the economic and social implications of incarceration under the Excise Act, which disturbingly tends to be casteist and gendered.

SUMMARY OF FINDINGS

We analysed 5,62,399 arrest records from 20 districts and 540 First Information Reports (FIRs) from nine police stations in three districts across Madhya Pradesh, between 2018 and 2020.

i. Prioritisation of Excise Arrests

Excise arrests accounted for 17.38% of arrests in 20 districts between 2018-2020. This is particularly high, given that the primary purpose of the legislation is regulation and not penalisation. Moreover, during the first phase of the coronavirus-induced lockdown, between March 22 and May 31, excise-related offences contributed to over one-sixth of the total arrests in MP, second only to Indian Penal Code (IPC) offences. While arrest numbers vary in districts, overall excise arrests remain high. They comprised nearly 39% of overall arrests in Burhanpur, comprising two-fifths of all arrests in 2020. Similarly, excise arrests are a substantial proportion in Khargone (34.34%), Betul (26.63%), Dhar (24.83%), and Chhindwara (23.77%). Even during lockdown, the average proportion of excise arrests in total arrests only decreased by 1.04% from 2019 to 2020. These numbers signify the police's prioritisation of law and social order maintenance through excise policing. However, there is no uniformity in excise arrests in the districts, Ujjain for instance has a low proportion of arrests with an overall average of 7.31%. Similarly, Rewa and Gwalior have overall averages of 11.78% and 9.74%. This shows that there is no uniform policing of excise offences across districts, their role in policing activity differs in different districts. The districts having high percentages of excise arrests, like Betul, Burhanpur, Chhindwara, Dhar and Khargone, are Fifth Schedule areas.

ii. Carceral Predispositions

A majority of the excise arrests (47.29%) are made under bailable section 34(1) of the Excise Act. These offences are relatively less '*serious*' than those under the non-bailable sections, 34(2) and 49-A, which comprise 6.20% and 0.88% of excise-related arrests in MP. However, in the context of the larger criminal justice system, none of these do qualify as '*serious*', since offences must be punishable by seven years or more to be considered '*serious*'.

In *Arnesh Kumar v. State of Bihar*, the Supreme Court observed that for non-serious offences, arrest is not automatic and has to be made as per the requirements under Section 41 of the Code of Criminal Procedure (CrPC), 1973. Consequently, the large excise arrest numbers highlight the carceral tendencies of the police.

Moreover, most offences, such as mere possession (constituting close to 40% of the total FIRs), are bailable. The police may also issue notice under Section 41-A instead of carrying out arrests after registering FIRs. However, notice has been issued to only 105 accused persons out of the 503 FIRs registered under bailable offences. Bail with surety was granted in 52% of the arrests made in the FIR data set. There is no coherent policy: some police stations in Betul (Betul Kotwali PS) and Jabalpur (Belbagh PS) required bail with surety in 93% and 91% arrests respectively, while 65% of the arrests were resolved this way in Bhedaghat police station of Jabalpur. Bail on personal bond was allowed only in 29% of the FIRs that culminated in arrests.

iii. Caste, Gender and the 'Criminal'

The casteist and colonial practices that inform the institution of policing in India reflect in findings about the caste status of the individuals policed. Of the 562 individuals implicated in the 540 FIRs analysed, the caste status of 12% individuals could not be determined with certainty. Overall, there was an over-representation of individuals from oppressed caste communities. The SC, ST, OBC and Vimukta communities constituted a majority of the accused, at 14%, 15%, 16% and 11% respectively, with general category individuals comprising only 10% of the accused.

An analysis of the intersection of gender and caste reveals a pattern of persecuting women from oppressed communities. In our FIR dataset, out of a total of 46 women accused, the social location of 32 women belonged to Vimukta communities, 7 to Adivasi communities and one to the OBC community and 1 to the dominant caste communities. The social locations of 5 women could not be ascertained. The FIRs criminalising women are concentrated around specific police stations. In the nine police stations we studied, 25 of the 46 women accused resided in Ghamapur police station's jurisdiction in Jabalpur, while the remaining 21 women were implicated in four other police stations. 24 of the 25 accused women from Ghamapur belonged to the Vimukta Kuchbandhiya community.

iv. Criminalisation of Vimukta Women

The criminalisation of the Kuchbandhiya community, especially Kuchbandhiya women, appears to be a strong prejudicial trend within Ghamapur PS, Jabalpur. Between 2018 and 2020, of the 1,094 excise-related arrests, 624 (57%) involved Kuchbandhiya accused. Two out of every three individuals (70.7%) arrested for excise-related offences from the Kuchbandhiya community were women. Moreover, of the 509 women arrested in excise-related offences in Ghamapur, 441 women were from the Kuchbandhiya community.

Persecution is a reality for Dalit, Adivasi and Vimukta women in the Indian criminal justice system. Our findings suggest that Vimukta women are more susceptible to persecution in MP, particularly due to their historical association with criminality. The construction of Vimukta women's criminality is a result of policing practices. This is sufficiently demonstrated by Ghamapur PS in Jabalpur, which is located about half a kilometre from a Kuchbandhiya *mohalla* (neighborhood). In our analysis sample of 60 FIRs from Ghamapur PS, 33 individuals implicated were from the Kuchbandhiya community. In each of these FIRs, the police accused the individual of possessing *desi mahua* alcohol in the 2-5 litre range. Three Kuchbandhiya women between 30 and 40 years of age were also arrested 28, 26 and 23 times respectively.

v. Costs of Criminalisation

a. Incarceration and Access to Bail

From interviews with two practising lawyers in trial courts in different districts and three accused persons, we learnt that for arrests under Sections 34(2) or 49-A, subordinate courts typically deny bail. Bail is then obtained from the High Court, which typically requires a minimum surety of ₹50,000 – ₹1,00,000. Obtaining bail from the High Court means several months of pretrial incarceration and high expenses for lawyers, court filings and sureties. Furthermore, these offences are not serious offences and the Supreme Court guidelines in *Arnesh Kumar* would be applicable. Therefore, arrests for these offences fall foul of the law and bail ought to be granted by the Magistrate. In every one of the 12 FIRs studied under Section 34(2), the accused person was arrested.

b. Fines, Police Violence, Harassment and Extortion

Persons from communities targeted by the police informed us over interviews that they usually pay fines for bailable offences under the Excise Act, often under compulsion or duress induced by the police.

The police appear to have greater leverage over community members when the laws and their implementation is stricter. The mere threat of a case filed by the police compels individuals to pay bribes. In overpoliced areas typically inhabited by Vimukta communities, the police carry regular surveillance and demand bribes. A Kuchbandhiya woman interviewed claimed to have paid ₹15,000 as police bribe between June and July 2021. Other oral community accounts claim that for offences under Sections 34(2) or 49-A, the police may demand between ₹80,000 - ₹1,00,000. Oral community accounts also describe the filing of false cases, police brutality and complete impunity.

vi. Narratives of Criminality

a. Callous detailing of subsections and allegations

Of the 540 FIRs, 99 FIRs (18.3%) did not detail the specific provision and clause that the individual was accused of violating under Section 34. This broadens the scope of prosecution an individual is subject to, creates uncertainty about whether the offence they are accused of committing is bailable or not and leaves individuals unable to adequately defend themselves.

81 FIRs under Section 34(1) provide no rationale for accusation. This highlights the presence of police discretion in determining violations of law. 25 FIRs registered under Section 34(1) are unclear about the licence one is being questioned for. Only 2.4% of the total FIRs allege violation of Section 34(2) which criminalises alcohol volume above 50 litre.

b. Criminalising 'sale' and possession simpliciter

442 FIRs were registered under Section 34(1), of which 48.9% accused an individual for lack of licence for possession. There is no rationale behind the questioning for a licence. Section 34 criminalises possession in contravention of specific rules or notifications, which have not been mentioned in any of the FIRs. Criminalisation of mere possession is also particularly disconcerting, considering that individuals from oppressed communities are often policed. 62 of the Section 34(1) FIRs allege the lack of licence for sale. These FIRs reveal a template form, beginning with a *mukhbir's* (informant's) tip-off alleging sale or possession of alcohol by the accused, police reaching the spot, and then questioning the accused about a licence to sell. No reference is made to facts indicating actual sale, presence of a customer, exchange of money, etc. Moreover, it highlights the primacy of the *mukhbir's* information in policing, especially in the absence of additional facts.

c. Reliance on mukhbir information

The police relied on information given by a *mukhbir* in 89% of the FIRs; patrolling and miscellaneous sources constituted only 6% and 4% of the FIR sources respectively. In Betul's Shahpur PS all 60 FIRs studied originated from *mukhbirs'* information. In the 81 FIRs under Section 34(1) for which no rationale was provided for accusation as mentioned earlier, the police relied on *mukhbirs'* information. This highlights the importance of information given by the shadowy figure of the *mukhbir* in excise policing and constructing criminality, highlighting the inadequacy of police reporting and the consequent increase in police discretion

Alcohol seizure was common to all 540 FIRs filed. Additional items were seized in 18% of the FIRs – 83% being paraphernalia related to alcohol consumption, 14% being vehicles and 3% involving seizure of cash.

d. Incorrect invocation of Section 36-B

In all the 78 FIRs filed under Section 36-B, which criminalises individuals “found drunk and drinking” in a common drinking house, the section has been invoked incorrectly, penalising individuals “found drunk and drinking” *simpliciter* instead. In 5% of the FIRs registered under Section 36-B, the police ask for a ‘license to consume’ from the accused individuals and arrest them for merely being inebriated in a public place. Such application of Section 36-B makes these FIRs devoid of legal standing.

vii. Country Liquor and Criminality

a. Policing in terms of liquor volume

Desi liquor is disproportionately policed. 92% of the FIRs concerned *desi* liquor exclusively, and 73% of the FIRs involved 1-10 litre of such alcohol. Within the 1-10 litre volume range, a majority of the cases were in the subranges of 3-4 litre (30%), followed by 2-3 litre (25%) and 4-5 litre (18%). In 74 FIRs (14%), the exact volume of alcohol was not detailed in the FIR. Vague descriptions of alcohol quantities were provided such as “*bottle jismein kuchh sharab bachi thi*” (“a bottle with some alcohol left inside”) and “*jo aadhi se kam bhari hui hai*” (“which is more than half-empty”).

Commercial quantities of alcohol (50 litre and beyond) were found in 12 FIRs. The highest average volume of alcohol in these FIRs was 17.4 litre.

We found that there was no difference in police approach towards policing commercial and non-commercial quantities of liquor. There is also a lack of proportionality in the police's approach towards several of the accused. For instance, in Bhopal's Aishbagh PS, two identical FIRs were filed: the police rushed to the spot after receiving a *mukhbir's* tip, found the accused fleeing and arrested the accused after registering FIRs. However, one of the FIRs involved 57 litre of alcohol, while the other involved mere 3 litre of alcohol.

b. Public perception and liquor prices

Popular imagination may assume that excise-related FIRs concern high volumes of liquor. Such assumption is likely caused by the disproportionate portrayal of excise policing as police raids on liquor mafia and crime syndicates.

In our analysis, we found that the minimum value of alcohol seized was ₹160 among Section 34(1) FIRs and ₹3,100 among Section 34(2) FIRs. The maximum value of alcohol seized was ₹14,120 among Section 34(1) FIRs and ₹4,68,000 among Section 34(2) FIRs. The median values of alcohol seized were ₹15,825, ₹700, and ₹800 respectively for offences under Sections 34(2), 34(1), and a combination of Sections 34(1) & 36.

c. Mahua, and Bahujan spaces as sites of criminality

In 25% of all FIRs related to *mahua* liquor, the private spaces of marginalised communities were identified as sites of criminality and encroached upon by the police in a concerted manner. 73% of the FIRs related to *mahua* liquor were non-commercial public spaces such as parks, temples and grocery stores situated around or in marginalised communities' neighborhoods.

55% of the FIRs filed in Jabalpur district concerned *mahua* liquor, while Ghamapur PS (which includes a Kuchbandhiya *mohalla* in its jurisdiction) registered 47 FIRs (out of 60) concerning *mahua* liquor. The policing of *mahua* suggests the imposition of the Brahminical way of life on the marginalised Adivasi and Vimukta communities through policing.

62.59% of the FIRs alleging sale or intent to sell situate the crime in non-commercial public spaces (public parks, roadside, etc.) while another 16% of the FIRs alleging sale or intent to sell situate the crime in homes and private spaces. This is relevant given that these are predominantly Bahujan homes. The notion of 'private' is discarded in favour of surveillance at the hands of the state in case of marginalised communities.

viii. Prevalence of Recurring Witnesses

The law mandates the independence of witnesses for search and seizure. However, one in every two FIRs studied found the presence of recurring witnesses. The largest number of recurring witnesses were in Shahpur PS, Betul (11 witnesses), followed by Intkhedi PS, Bhopal (10). Of the 75 recurring witnesses identified, 12 (16%) were police persons. The caste locations of nearly 39% of recurring witnesses was unidentifiable. 13.3% of recurring witnesses were from SC communities, 6.7% from ST communities, 8% from Vimukta communities and 4% from OBC and other marginalized groups. Therefore, at least 32% of the recurring witnesses were from marginalized communities.

In Ghamapur PS, Jabalpur 58 of the 60 FIRs studied do not provide details about the witnesses. In the other 8 police stations studied across 3 districts, at least two witnesses were noted to have regularly appeared in cases between 2018 and 2020. This raises several concerns about the police's *modus operandi* and the accused persons' procedural rights.

ix. Recurring Accused from Marginalised Groups

Several accused persons were implicated in more than 1 FIR. This is concerning, given that the sample size is merely 540 FIRs registered between 2018 and 2020 under the Excise Act. For context, the sample of FIRs studied is only 7% and 11% of the total FIRs registered under the Act in Belbagh PS, Jabalpur in Shahpur PS, Betul respectively.

The phenomenon of recurring accused can be attributed to the colonial legacies of the Criminal Tribes Act as well as tangible economic benefit that lawyers and police officers seek to derive from such 'history sheeters' by treating them as a source of income.

Chapter 1:

INTRODUCTION

*What may excise policing reveal
about the criminal justice system?*



Policing is generally understood to be a means of controlling crime, particularly in popular imagination, heinous crimes. However, maintaining law and order, primarily social order, is a large aspect of policing in India. India's policing system was set up by the British colonial administration to control, coerce and surveil its Indian subjects and enforce a facade of order to legitimise its 'civilising' mission. Since independence, policing has evolved into a tool of casteist social control for the maintenance of law and 'order' (1). Excise policing has been a critical component of this exercise in social control since the British introduced excise laws in India. For instance, even during the three phases of the coronavirus-induced lockdown in 2020, 13-18% of all the arrests in Madhya Pradesh (MP) were for excise-related offences. (2)

Much of the excise regime was intended to and continues to sustain and ensure a state monopoly over revenue generated through alcohol. It also similarly governs the prohibition of certain kinds of alcohol, including *desi* liquor such as *mahua*, which the state deems impermissible to sell, possess, and consume. However, public discourse about the excise regime predominantly focuses on the debates around prohibition, also known as temperance.

Going beyond the questions on state monopoly and prohibition, this study examines how state regulation in this sphere plays out in the real world to outline:

- **who is policed** (mapping caste and gender locations of the accused);
- **which activities and political-economies are policed** (understanding the realities of offences relating to sale, possession, consumption); and
- **how narratives of criminality are constructed** through the excise regime.

It is important to understand how the consumption, possession and sale of alcohol is criminalised to disproportionately affect specific communities, and how specific types of alcohol induce greater state anxiety. Therefore, our aim and approach is to deconstruct the framework of excise regulation and analyse it through an anti-caste and anti-carceral approach. There is sparse literature on excise policing through an anti-caste and anti-carceral lens. To our knowledge, there is also little to no empirical work on these questions.

Madhya Pradesh is the site of our study for four reasons – first, excise laws are used relatively far more extensively in the state at 105.6 per 1,00,000 population by the criminal justice system (3). MP has a high representation of excise offences in state-wide arrest data and is the only state with three-figure excise offence rate (Crimes in India, Vol. I, NCRB, 2018). The national average for offences charged under the excise laws is 20.2. Second, given our work representing members of Vimukta, Adivasi and other marginalised communities in Madhya Pradesh, we learnt of police targeting of specific communities under the Excise Act from first-person accounts. Third, Madhya Pradesh police regularly upload information relating to arrests and First Information Reports (FIRs). These police records form the basis of our empirical study. Fourth, MP has a large ST population (21.09% as against the national figure of 8.63%) (4), who have a long history of (often oppressive) engagement with excise laws.

Our study excludes from its purview a discussion on the advantages and disadvantages of prohibition or excise laws. Moreover, while the results of this study are indicative of broader underlying systemic issues, we do not make the claim that this is the story of excise policing in all police stations across all districts of MP. Instead, this research studies how the logics of excise policing occur in a microcosm to construct the narratives of criminality, and the role of police discretion in constructing criminality. Ultimately, our research leads us to conclude that excise regulation needs to be more accountable and adopt an anti-caste, decolonial approach.

Chapter 2:

THE HISTORICAL FRAMEWORK AND POLITICAL ECONOMY OF THE EXCISE REGIME



This chapter outlines the frameworks, conflicts and debates that have shaped the capitalist and casteist nature of the excise regime in India. It traces the colonial imposition of capitalist licensing to alcohol production and sale for revenue maximisation, and the embrace of prohibition by the Gandhian nationalist movement. It outlines how the hegemonic discourse on prohibition has erased concerns raised by women's movements and Adivasi communities. The chapter also summarises key provisions of the Madhya Pradesh (MP) Excise Act, 1915 and concludes by studying how the licensing system of MP's excise regime excludes Adivasi communities from alcohol trade, while profiting from consumption by these communities.

i. Colonial Imposition of Capitalist Frameworks to Alcohol Production

Consumption of liquor in India has a long, varied history. In Adivasi cultures, brewing and consuming liquor has strong cultural, social, and religious elements. Across Indian subcontinent, various Adivasi communities' diets include indigenous forms of liquors such as *apong* in Assam, *handia* in Jharkhand, *neera* in Tamil Nadu, *kallu* in Andhra Pradesh, and *mahua* in Madhya Pradesh, Chhattisgarh, and Odisha, providing nutrition, sustenance, and relief. (5) However, amongst the various sociocultural roles alcohol performed in precolonial India (6), its production and distribution lay beyond centralised state control.

The arrival of the British in India altered the landscape; the colonial administration saw liquor as a commodity waiting to be regulated to its economic advantage. (7) Simultaneously, colonial attitudes to the consumption of alcohol were driven by temperance movements at home, recognising it as a social ill, of which the native population had to be rid. Thus, the marriage between market and morality came to characterise colonial policy as regards alcohol. (8)

Initially, the East India Company opted for flexible, decentralised regulation in the form of licensing regimes, as exemplified by the *buddene* cess levied as part of land assessment in the Bombay Presidency on toddy-producing palm trees, granting the payer exclusive rights to draw and distil liquor from them; similarly, *salsette* referred to an annual monopoly granted for the retail of country liquor to farmers, most of whom were Parsis. (9) However, it was soon found that the system exhibited considerable disadvantage in the form of paltry revenue gains due to the wide latitude of operation provided to the licensees and the scope of large-scale non-compliance with, or dexterous evasion of, the regulations. (10)

As a result, the need for centralisation of the excise regime became urgent. Centralised distilleries came to be established as early as 1859 and the move towards a more efficient machinery for the regulation came to be represented in such legislations as the Bombay Abkari Act, 1878 and the Mhowra Act, 1892. (11) These laws mark the beginnings of the excise regime as we know it today: production of *mahua* liquor was confined to central distilleries; excise duties were levied on liquor at source; and licences were made mandatory for the sale of liquor. Higher taxation led to the inevitable commercialisation of the liquor market, which, in turn, transferred the costs to the consumer Adivasis. (12) Consequently, indebtedness increased; Adivasis were compelled to consume harmful, industrially produced alcohol; and illicit drawing and brewing rose precipitously. (13) The Mhowra Act 1892 sought, as one of its objectives, to curb such illicit production, and the resultant loss to the state coffers, by banning the collection of *mahua* flowers, which, being an important component of the Adivasi diet, pushed already struggling communities further into the abyss of poverty and deprivation. (14)

ii. Endorsement of Prohibition by the Nationalist Movement

The excise regime was also animated by a strong strain of temperance-based morality, and the alleged purpose of making alcohol expensive was not just the maximisation of revenue, but also the minimisation of its consumption. (15) However, as the preceding discussion shows, the laws, owing to their severity, produced the opposite effect: with criticism of the law near universal, resistance widespread, and illicit behaviour rampant, the subject-populace seemed now to be drinking more than ever. (16) Attempts to strictly enforce offences under the excise regime were to no avail and reliance on cheap, foreign varieties of liquor created the problem of drunkenness where earlier moderation was *de rigueur*. (17) However, far from dissuading the colonial administration from pursuing its virulent excise policy, its disastrous consequences acquired the force of self-fulfilling prophecy and circular justifications for its persistence. (18)

Within this context, civil society actors came to converge on abstinence-based programmes as the way out of the impasse. Some Adivasi communities saw in abstinence freedom from the oppression engineered by the excise regime. (19) On the other hand, nationalist leaders, whose aversion to alcohol had its basis in their Brahminical sensibilities shaped by explicit proscriptions found in their religious texts, (20) realised that characterising alcohol as an

'alien' vice would give them a moral high ground from where they could launch an attack on the colonial administration's financial vigour, which derived from staggeringly high excise revenues. (21)

The earliest Adivasi temperance movements can be traced back to 1909, coming into full bloom in the 1920s as they found common cause with, and were, in instances, appropriated by the rising Gandhian tinge on India's political horizon. (22) Indeed, Mohandas Gandhi's rhetoric, which wedded the goal of political swaraj with the transformation of self that came from the rejection of detractive 'sins' such as drunkenness, (23) looms large on how the independence movement engaged with the issue of alcohol. The prominent position total prohibition occupied in the Indian National Congress' social reformist agenda was buttressed by Gandhi's steadfast insistence on it. (24)

Unsurprisingly, then, the membership of the Constituent Assembly that identified most strongly with the Gandhian ethos, came to insist (25) on the constitutional enshrinement of prohibition in the Constitution after the first draft of the Constitution (26) included no such provision. Dissent was scarce: only Balasaheb Hanumantrao Khardekar (27) and Jaipal Singh Munda voiced their opposition to the measure, the former on the grounds of personal liberty and the latter foregrounding the cultural and religious practices of Adivasis. (28) Eventually, prohibition came to be enshrined under Article 47 as part of the chapter on Directive Principles of State Policy, as one of the several ideological compromises (29) enjoining the state to "endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health ." (30)

Post independence, two states in India, Bombay and Madras, introduced prohibition through legislation in 1949 and 1952; in both instances, the laws were ultimately modified in favour of regulated access, in case of the former after protracted litigation. (31) In 1954, a Prohibition Enquiry Committee was set up to draw up plans for heralding total prohibition in the country. (32) However, the plans were abandoned once the exorbitant losses in revenue were contemplated. (33) Indeed, despite the dialect of paternalism in which public discourse on alcohol takes place, excise policy in India has overwhelmingly toed the line of cold economic logic. (34) At present, four states and one union territory practise prohibition. The most recent entrants into the fray are Bihar and Andhra Pradesh; in both the states the policy has had typically ambiguous results. (35)

iii. Concerns Raised by Women's Movements and Adivasi Communities

The centralised system of excise regulation served the twin colonial interests of taxation and temperance by transferring economic costs on to the Adivasi communities. This centralised system, continued in post-independence India, also cost Adivasi communities their cultural and religious freedom (as predicted by Munda) (36) as well as their personal liberty, insofar as the regime is enforced mainly by criminal provisions. Unsurprisingly, little has been said on how the excise regimes of the country impact Adivasi communities: (37) the pragmatism-principle dichotomy that dominates both the excise regimes of the country, and the conversations around them, are to blame.

The binary also serves to obfuscate other nuances: the case for prohibition is most strenuously urged, for instance, in the interest of women; instead, a history of women's temperance movements reveals their inclination for strategic regulatory interventions. (38) While some scholarship has identified alcoholism as one of the many causes contributing to violence against women, (39) and cutting off access to alcohol has been observed to have a positive impact on its reduction, (40) blanket bans on alcohol simultaneously dry up the means of sustenance of families, especially from communities that traditionally rely on the trade of country liquor, besides rendering such communities vulnerable to legal sanction. Thus, prohibition becomes a proxy for larger structural reforms to which movements for women's empowerment are committed, such as promoting economic independence and providing social support for survivors of domestic violence. (41)

Likewise, instances of advocacy of abstinence in Adivasi regions have often been seized up only too readily in service of the long-standing casteist stereotypes of the 'drink-ridden' Adivasi, (42) but closer inspection reveals a drastically different, more insidious colonial continuity: an indifferent and uncaring state at odds with several of its peoples, who feel assured of liberty not when the law is adhered to, but when it is absent.

iv. The Madhya Pradesh Excise Act, 1915

Alcohol is regulated in India by each state separately (Entries 51 and 54 of List II, Seventh Schedule, read with Article 246(3) of the Constitution of India). In MP, this happens within the framework of the MP Excise Act, a colonial legislation which first came into force in 1915.

The Excise Act regulates, *inter alia*, “import, export, transport, manufacture, sale and possession of intoxicating liquor and of intoxicating drugs” (Preamble) and also enables the MP government to enact provisions for “effective control of *mahua*” (Section 8(c)). However, the most commonly used provisions are found under Chapter VII of the Excise Act and concern possession and sale of alcohol as well as public drinking.

The Excise Act penalises “unlawful manufacture, transport, possession, sale etc.” of liquor with imprisonment of upto one year and fine (Section 34(1)) except when liquor is found in bulk (“in excess of fifty litres”). For the latter, that is, commercial quantities of liquor, the punishment is enhanced to between one year and three years of imprisonment and fine (Section 34(2)). The Excise Act also authorises seizure of liquor if it is found to be in bulk (Section 34(3)).

Interestingly, possession is also penalised in a separate provision. When the accused knows the liquor to have been “unlawfully imported, transported, manufactured, cultivated, or collected”, without payment of the prescribed duty, in contrast to possession under Section 34, the imprisonment is upto a maximum period of six months (Section 36). Under this section, the criminality derives not from possession of liquor itself but from the knowledge that the liquor was “unlawfully imported” and the prescribed duty not paid. Notifications issued under the Excise Act allow possession of legally procured country liquor up to 12 quarters, that is, 2.16 litre.

The Excise Act penalises various actions related to public drinking. Persons running places used by the public for drinking, that is, common drinking houses, can be punished with imprisonment of up to one year or with fine (Section 36-A read with Section 2(4)), and those found drinking in these common drinking houses can be punished with fine up to ₹1,000 (Section 36-B). It is worth emphasising at this juncture, in order to better understand later chapters, that the latter penalty can only be imposed when the accused is found drunk or drinking *in* a common drinking house.

Any person found permitting a place to be used to commit offences under the aforementioned provision is penalised as committing a separate offence (Section 36-C). Their action is punishable with up to one year of imprisonment or fine.

Finally, Section 49-A criminalises import, export, transport, manufacture, collection, possession, bottling and sale of any liquor that is contaminated ("altered") or unfit for human consumption. Section 49A has been central to the 2021 Amendment to the Excise Act; it imposes a mandatory minimum punishment of six months imprisonment and a fine of ₹1 lakh for a first time offence that does not cause harm along with a maximum punishment of death and a fine of ₹20 lakh for a subsequent offence which has caused death.

Section 61D creates a limited exemption from the provisions of the Excise Act for members of the Scheduled Tribes in the Fifth Scheduled Areas to allow domestic consumption. The 2021 Amendment added a category of "Heritage" liquor to the existing categories of "Foreign Liquor" and "Country Spirit". The Amendment is purported to allow the state to regulate liquor produced from *mahua* and allow small-scale production and sale of *mahua* liquor but no other provision refers to this category. Whether the MP government will frame rules to allow this and whether such rules will be in the interest of communities traditionally manufacturing liquor from *mahua* will have to be seen. However, some states like Andhra Pradesh, Telangana and Karnataka have (or had) allowed the manufacture and sale of specific traditional liquors without separate manufacturing and sale permits, subject to limitations and conditions.

v. The Monopoly of the Excise Licence Regime

The centralisation of excise regulation in MP has led to the regional monopolisation of the trade of manufacturing, bottling and sale of alcohol. Licensing stipulations strictly govern these activities to significantly exclude the legal involvement of communities that traditionally manufacture and consume liquor from the alcohol trade.

Under the Schedule of the MP Country Spirit Rules, 1995 framed under the MP Excise Act, 1915 the annual licensing fee for manufacture and bottling of country spirit is ₹1,00,000; for sale the licensing fee ranges from ₹75,000 to ₹1,25,000. This is in addition to a deposit of ₹5,00,000 stipulated by Rule 3. There is also a bidding process for tender and the bids go up to several crores. The prohibitively high licensing fee and costs have ensured regional monopolisation of the alcohol trade, almost exclusively in the hands of conglomerates owned by upper caste families who are inheritors of historically accumulated social and economic capital.

According to the information on the MP Excise Department website, presently 11 corporations are licensed to manufacture and bottle country spirit; with each corporation allowed to supply to shops in designated regions of the state. (43) Of the 11 companies, 10 are owned and run by families and individuals from oppressor castes and other privileged communities—four Baniyas (including Agrawals and Kedia), three Khattris, one Thakur (Kshatriya) and one Parsi (Bapuna) and one from Jain community. The boards of directors of these 10 companies are also dominated by individuals belonging to Baniya, Brahmin, Sindhi and other Savarna and privileged communities. Only one of the 11 companies is owned by a person from the Yadav community. (The list of the licensed corporations and the names of the founder or promoter families is detailed in Annexure 5 of the report.)

With respect to licensing for sale in a given district, authorisation is usually granted to several different companies or individuals, except for districts such as Bhopal and Jabalpur where only one company is allowed to sell. (44) However, the same individuals control companies in several districts and the vast majority of licences are in the name of Brahmins, Baniyas and construction companies.

The excise regime in MP thus essentially restricts and criminalises Adivasi and other marginalised communities *by design* for their involvement in the alcohol trade and for accessing forest produce, while allowing Savarnas to monopolise alcohol trade and acquire massive profits. (45) State monopoly has allowed capitalist exploitation through state regulation and licensing; the caste hierarchy determines who profits off such exploitation. Certain companies that enjoy licensed monopolies for the sale of country liquor also employ individuals to patrol designated areas in cities such as Bhopal and identify individuals selling unauthorised country liquor to report to the company, in order to initiate criminal proceedings. (46)

As mentioned in the previous section, the Excise Act allows Adivasi communities in Fifth Schedule Areas of the state to manufacture (but not sell) country liquor for domestic consumption. This provision does not adequately protect their right to trade. As Munda asked in the Constituent Assembly, “What is going to happen to the *Adibasis*, who are in millions, outside those scheduled areas?” (47) This is a relevant question on the issue of excise law and criminalisation, given that a large population of Adivasis lives outside the Scheduled Areas or is not recognised as Scheduled Tribes.

The 2021 amendment creates a category of “Heritage” liquor to allow the state to regulate it, allowing small-scale trade. If the rules are framed by the government in consultation with criminalised communities, country spirit trade that some of these communities have carried out for centuries may be decriminalised. However, the state must first reckon with the structural criminalisation of Vimukta, Adivasi and other criminalised communities and the discriminatory attitudes pervading the system.

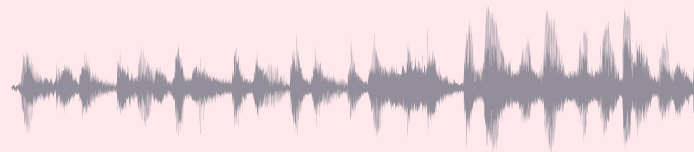
The 2021 amendment to the Excise Act focused on criminalising liquor unfit for consumption, also known as ‘spurious’ liquor, introducing death penalty for deaths caused by consuming spurious liquor. The amendment enacted on 11 August 2021 appears to be prompted by or at least is in response to the tragic death of 17 people from the consumption of spurious liquor in July 2021 and several incidents of death over the year. However, is a higher punishment a deterrent to deaths caused by spurious liquor? It is important to note that there is a long-standing trope of relying on stringent criminal laws to curb the ‘spurious liquor mafia’. However, our findings (detailed in Chapter 4) suggest that spurious liquor cases are rare and form a very small percentage of the total arrests made under the excise law. However, the state and media response to these rare tragedies creates a disproportionate narrative about the need for policing ‘illegal liquor’ sold by a nefarious mafia. Thus, public legitimacy for stricter policing with high penalties is manufactured by misrepresenting the need to clamp down on the life-endangering spurious liquor mafia. However, in the means of everyday implementation of the law, the consequences of stricter policing will be borne by marginalised communities already criminalised under the excise regime.

Our analysis of the MP High Court’s order in *Ramesh v. State of Madhya Pradesh* (below) encapsulates how the narrative of a ‘liquor mafia’ looms large in the criminal justice system to marginalise and criminalise the ‘scourge’ of illegal alcohol sold by Adivasi communities. It is also important to note that in the July 2021 tragedy, the spurious liquor that caused deaths was sold at government authorised shops and bars. It is very telling, therefore, that the state chose to impose strict penalties instead of reflecting on ensuring better regulation.

The 2021 amendment raises the mandatory minimum sentence under Section 49A to imprisonment of six months and a fine of ₹1 lakh (six years and ₹5 lakh for a subsequent offence) even when the spurious liquor has been consumed, has not caused any harm or is incapable of causing harm. Before the amendment, the sentence was imprisonment of two months and no minimum fine.

Marginalised communities reasonably fear that the amendment will only increase the police's leverage to exact higher bribes under the threat of filing false cases or making arrests. It is a common wisdom that any remedy in criminal law, particularly when the subject matter is tied to historical forms of oppression, only worsens the vulnerability of the oppressed. The present amendment pushes the law further in that direction.

“[T]he entire area is infested with tribals who run liquor shops”



Such was the remark by a police officer in the bail application *Ramesh v. State of Madhya Pradesh*, before the High Court of MP. (48) It is telling about how the entire criminal justice system perceives excise law violations. The case, a bail application, was filed by Ramesh who was found to possess 312 litre of beer in violation of Section 34(2) of the MP Excise Act. The bail application was examined not in light of the facts of the case, but everything else surrounding the case. The Court had called upon the investigating officer to “explain how 25 shops are engaged unauthorizedly in possession and sale of liquor indiscriminately in the area defying sanctions of the law.” The titular remark was made in response to this query.

The Court then went on to note the “disease” caused by this “infestation” of tribals. It observed that the liquor shops in the area of Boda police station, Rajgarh had been in operation since at least the 2018 Vidhan Sabha elections and had continued to unauthorizedly sell alcohol despite measures taken by the police. The Court called for ‘serious intervention’ to prevent jeopardy to public safety and social order; and, for those responsible for maintaining law and order to “eliminate such a set of people to restore public peace [sic] and harmony in the area.” The applicant’s case was never discussed in this hearing.

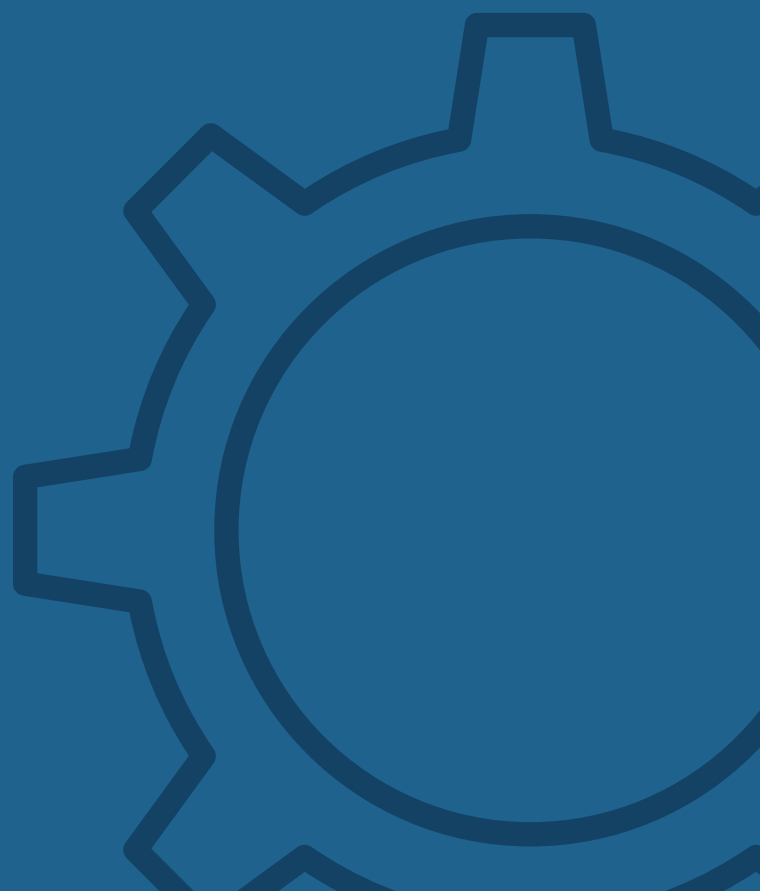
At a later date the Court called for the Superintendent of Police (SP) to explain the “unabated and indiscriminate possession and sale of liquor in the area.” At the next hearing the police explained the efforts they had made. (49) They described, among other things, that they had opened a new police station in the area, arrested 292 persons along with the main supplier of liquor and attached the properties of all the absconders. They stated that the “process of rehabilitation of such misguided tribals is also being actively persuaded [sic] so that such persons may have a respectable means of livelihood.”

The Court, after appreciating the efforts of the police, finally turned to the merits of the case. It noted the arguments advanced by the defence counsel—time spent in custody, completion of investigation, lack of a requirement for custodial interrogation, a question about alleged possession of the liquor, lack of criminal antecedents, and the applicant’s position as the sole breadwinner. The state opposed the bail only on the ground that “there is no explanation forthcoming regarding the huge quantity of liquor in the possession of the applicant”.

Giving weight to the arguments advanced by the defence counsel, the Court allowed the bail application. However, the cost of the bail bond was fixed at ₹3,00,000 along with one solvent surety. The Court did not explain why it set such an onerous amount for the bond. The amount seems excessive and unreasonable as the Court did not weigh the amount against any factors adversely affecting the likelihood of the applicant’s appearance at trial. Instead of taking into account the facts and circumstances of the case, the Court took into account the facts and circumstances of the area where the crime was allegedly committed. Whatever the intention of the Court, it is clear that both the police and the courts view excise offences as serious law and order problems that require creating new police stations, and setting high bail bond amounts.

Chapter 3:

METHODOLOGY



This chapter builds the case for judging police efficiency by statistical analysis of police records (arrest records and FIRs) and a careful examination of the facts and narratives revealed therein. It outlines the methodology for the study of 5,62,399 arrest records and 540 FIRs in Madhya Pradesh (MP).

i. Statistical Study to Judge Police 'Efficiency'

The Report of the India Police Commission 1902-03 argued that there was "much justification" for judging the work of police officers by statistics, especially when such statistics lead to a detailed and careful enquiry of the facts elicited by the numerical data. This sentiment both echoed and legitimised the growing institutionalisation of information collection in the governmentality and policing projects initiated by the British colonial authorities.

Since colonial times, the Indian police have engaged in the process of extensive record maintenance and statistical data gathering. The colonial government's quandary to control a large native population with limited resources led to an appetite for information collection. The police's practice of recording rates of crimes and conviction quickly escalated to extensive documentation of the personal characteristics of the 'criminal' in a bid to investigate and apprehend the 'roots' of crime and the 'character' of the criminal population. Such statistics, sourced from data comprising the lives of targeted communities, led to the foundation of the enterprise of criminology, and further legitimised the governmental project of foisting criminality, stigma and police surveillance on specific marginalised communities. The primary purpose for statistical analysis in the criminal justice system was to use police data to enhance the allocation of state resources on surveilling, policing and prosecuting specific marginalised communities under the guise of increasing police 'efficiency' and reforming the homogeneously constructed 'criminal class'. The police's data gathering practices also reduced marginalised communities to objects of further study to predict and curb criminal behaviour, and accordingly justify the police's existence, functioning and efficiency.

ii. Upturning the Gaze of Analysis for Police Data

In our study, we utilise statistics to judge the work of the police and use the data to perform a detailed and careful enquiry of the facts that inform the data. However, in analysing the data, our objects of study are not marginalised communities, but the very institutions, modes and forms of policing which disproportionately criminalise specific marginalised communities.

We use this data to judge the 'efficiency' of the police by applying an anti-caste and anti-carceral lens. Through this study, we hope to shift the paradigms in which police efficiency is imagined and also challenge the vertical orientation of statistical analysis in the criminal justice system, which allows the state to wield immense power over marginalised communities.

Our study uses quantitative and qualitative data to highlight the over-criminalisation of Vimukta and other marginalised communities in MP vis-à-vis the devolution and exercise of immense discretionary powers by the police. Police records that document the alleged 'criminality' of individuals, such as the First Information Reports (FIRs) and arrest records, are the source of our statistical analysis. We extract data from these sources to study whether the exercise of discretionary power, directed towards marginalised individuals implicated in them, meets the objectives of MP's excise laws and whether such exercise is just, principled and non-discriminatory.

iii. The Challenges of Mapping Individuals' Social Locations and Our Methodology

A key purpose of our study is to locate the caste locations of the individuals arrested and implicated in FIRs under the excise law. Both arrest records and FIRs require the full names of the individuals to be documented by the police. We sought to examine individuals' caste locations from the last names listed in these police records. Last names are a visible marker of one's caste location in Indian society. Journalist Jeya Rani argues that last names are "oral caste certificates". (50) Last names have been worn as virtual badges of superiority by the oppressor caste groups and they are an immediate marker of one's inferiority for individuals belonging to the oppressed castes. They have also featured prominently in anti-caste reformist movements. For instance, anti-caste leader Periyar dropped his last name at the first Tamil Provincial Self Respect Conference at Chengalpet in 1929. He argued that the abolition of casteist last names was crucial to undermining the caste system itself. Similarly, many Dalits have adopted the last name Gautam in an act of self-assertion against the brutally oppressive caste system.

However, ascertaining the caste location of an individual from their last name is beset with challenges, due to state policies and the hyper-localised interrelations of the caste system itself.

The Indian State and respective state governments have all undertaken extensive exercises to enumerate the caste locations of citizens. In such enumeration and categorisation, they have erred at several levels.

First, the administrative categories of 'General', 'Scheduled Castes', 'Scheduled Tribes' and 'Other Backward Classes' completely invisibilises and subsumes Vimukta communities who have distinct socio-cultural histories and unique experiences of caste oppression, falling entirely outside the caste system as nomadic or semi-nomadic communities. As a result, some Vimukta communities are considered by the state (on paper) to belong to the General category, others as Scheduled Castes and still others as Scheduled Tribes. The Renke Commission and the Idate Commission established by the Union government were tasked with identifying the nomadic, semi-nomadic and Vimukta communities across India. However, these Commissions' recommendations and findings have not yet been formalised to recognise these communities as a distinct group in state categories. Another challenge to ascertaining caste from last names arises in the case of oppressed caste communities belonging to non-Hindu caste groups. The stateist pigeonholing of oppressed caste communities to Hinduism has led to the exclusion of these communities from the Scheduled Castes and Scheduled Tribes categories, despite demands from Dalit Christians and Pasmanda Muslims. The inclusion of these communities in the OBC category is also impeded due to the dated nature of OBC classification in the absence of caste census data. Therefore, given the state's lack of recognition of caste beyond the fold of Hinduism, our (and any such) exercise is limited in its inability to ascertain caste among non-Hindu groups.

Second, the classification of communities in these state categories is itself fraught with inaccuracies and contestations. For example, dominant caste communities have exercised their political powers to demand inclusion in lists of Other Backward Classes, Scheduled Castes or Scheduled Tribes to benefit from affirmative actions of the state and the reservation policy in education and employment. The Kapus of Andhra Pradesh and the Marathas of Maharashtra offer prominent examples of communities making such demands (and even succeeding sometimes) in the recent past. On the other hand, some Adivasi and Dalit communities find themselves categorised as General or Other Backward Classes despite suffering the full oppression of the caste system.

Third, the relationship between the last name and the caste locations differ from state to state or even one district to another, in order to account for local intricacies.

Here, it must also be noted that several marginalised communities migrate across state borders i.e. they may be considered as belonging to a specific marginalised community in one state's official categories but may not find a space in the other state's categories at all on account of being considered migrants or non-locals, although caste follows one everywhere and caste certificates are also eligible across state boundaries. However official enumeration in state lists isn't a given.

Fourth, state lists of SC and ST communities may be comprehensive but are not exhaustive.

Fifth, certain last names (such as Thakur, Rathore and Kumar) are ambiguous. They are last names claimed by both the oppressor and oppressed caste groups and therefore it is difficult to ascertain whether an individual with such a last name belongs to the oppressor caste groups or the oppressed caste groups from a perusal of the arrest records and FIRs which provide no further information. It is also not unheard of for some marginalised community members to adopt the last name of an upper caste group to pass off as upper caste and avoid at least some of the caste stigma from their oppressed caste status. Sixth, states publish only the names of groups that are enumerated as belonging to the Scheduled Castes, Scheduled tribes or Other Backward Classes. However, there is no state list of which communities belong to the General category. As Deshpande argues, (51) the lack of enumeration of castes in the General category, which predominantly comprises oppressor castes, is also evidence of how state categories are used to bolster the 'castelessness' of the General category.

Despite these challenges, we have persevered by scouring through:

1. **Central and MP state SC and ST lists**
2. **Central and MP state OBC lists**
3. **Idate and Renke Commission lists**
4. **Land record documents from the various districts across MP**
5. **Merit lists for national scholarships and fellowships (eg. National Talent Search Examination)**
6. **MP scholarship portals and merit lists for competitive exams**
7. **Oral histories of marginalised Vimukta community members about their caste oppression and unique criminalisation**

We have classified last names as belonging to the following groups – ‘General’, ‘Scheduled Castes’, ‘Scheduled Tribes’, ‘Other Backward Classes’, ‘Vimukta’, ‘Maybe General’, ‘Possibly Marginalised’, ‘Unclassified’ and ‘Zero’ (0).

‘General’ indicates such last names that belong to the oppressor or so-called upper castes. ‘Scheduled Castes’ includes the names of Dalit communities. ‘Scheduled Tribes’ includes the names of Adivasi communities. ‘Other Backward Classes’ is derived from the enumeration in official state documents. ‘Vimukta’ includes all Vimukta communities and is primarily derived from oral histories and classifications in the Idate and Renke Commissions. ‘Maybe General’ includes all last names that are used by both the oppressor or upper castes and the oppressed or the marginalised castes. For instance, the last name ‘Maurya’ in MP is used by both upper caste and Adivasi communities. Therefore, our classification ‘Maybe General’ errs on the side of *undercounting* marginalised individuals. ‘Possibly Marginalised’ includes all last names that are used by different groups of marginalised communities and not any of the oppressor castes. For instance, ‘Barde’ is a last name that is used by Dalit, Adivasi and OBC communities. Therefore, for last names that are classified as ‘Possibly Marginalised’, we have been unable to classify which specific marginalised group the last name belongs to, but have sufficient evidence to indicate that the last name is claimed by *at least two* groups of marginalised communities. ‘Unclassified’ includes such last names whose caste location we were unable to determine despite our fairly extensive search. ‘Zero’ includes the arrest records and FIRs that did not contain any last name.

We do not claim that our methodology is perfect. Indeed, given the state’s failure in adequately and uniformly recognising communities or enumerating them and the caste system’s hyper-local intricacies. However, we do claim that our categorisations are reasonably indicative of one’s caste location, when determined solely by their last name.

It is also important to note that the 2011 Madhya Pradesh State Census contains data for the *district wise population* of only SC and ST communities. The population of OBC communities in the districts of Madhya Pradesh has been enumerated but is not published in the public domain. Vimukta populations are not counted in any state census. Therefore, we have been able to contextualise the proportions of individuals arrested or implicated in our datasets, with respect to their overall proportion in the population of the specific district, only for SC and ST communities. For other communities i.e. the General category, OBC and the Vimukta communities, our findings on over-representation are situated in the context of the *state-wise proportion* of these communities in the total state population.

iv. Methodology for Studying Arrest Records

We studied the total set of 5,62,399 arrest records uploaded in Madhya Pradesh from 1 January 2018 to 31 December 2020 (inclusive) across twenty districts– Betul, Bhopal, Burhanpur, Chhatarpur, Chhindwara, Dewas, Dhar, Gwalior, Indore, Jabalpur, Khargone, Mandsaur, Raisen, Rajgarh, Ratlam, Rewa, Sagar, Satna, Seoni and Ujjain. These twenty districts were selected randomly and six of the twenty districts (i.e. Betul, Chhindwara, Dhar, Khargone, Ratlam and Seoni) comprise Tehsils designated as Fifth Schedule areas. The arrest data was collected from the records published on the MP Police’s public website—the Madhya Pradesh Police Citizen Portal (<https://mppolice.gov.in/en>). It is important to note that our dataset may not be exhaustive since police stations may have made arrests without reporting or uploading them on the website for any number of reasons, including arbitrary arrests as well as lack of internet access during specific durations.

However, the 5,62,399 arrest records provide a reasonably comprehensive picture of overall policing trends in the twenty districts. These arrest records were studied to calculate the proportion of arrests made under excise laws in relation to the total number of arrests for each district. This analysis highlights *how* many policing resources are expended for exercising social control under the excise law. Arrest records contain key information such as the name of the arrested person, the name and rank of the Investigating Officer, the date of arrest and the offence under which the individual implicated has been arrested.

As a second level of analyses, we studied 48,898 arrest records pertaining to offences under the excise law only across nine randomly selected districts of the set of twenty districts – Betul, Burhanpur, Chhindwara, Dhar, Khargone, Raisen, Rajgarh, Sagar and Seoni districts. The purpose of such analysis was to map the social locations of the arrested individuals from their last names. The time period of study was also from 1 January 2018 to 31 December 2020 (inclusive). Five of the nine districts (i.e. Betul, Chhindwara, Dhar, Khargone and Seoni) comprise Tehsils designated as Fifth Schedule areas.

v. Methodology for Studying First Information Reports

In order to better understand the reach of the criminal justice system, we looked beyond arrest records to examine the initiation of the criminal justice process through the FIRs. The FIRs, like arrests, demonstrate structural power dynamics between the police and marginalised communities. The initiation of the criminal justice process through filing an FIR is often dictated by social hierarchies.

In the past, police authorities have both filed and refused to file FIRs on the mere basis of the nature of the alleged offence and the gender, caste, religious and sociopolitical identities of the alleged victims and alleged offenders. In *Lalita Kumari v. Government of UP*, (52) the Supreme Court of India issued guidelines mandating the registration of FIRs for all cognisable offences. However, the law continues to be violated. Furthermore, few checks are in place to curb the frivolous filing of FIRs by police authorities and thereby abusing their powers of arrest for cognisable offences to perpetrate harm. FIRs are also written records containing details about the reasons for suspicion against an accused and the complainant's version of the facts. The language and narratives in the FIRs, when filed by the police, offer key insights into law enforcement.

We studied a sample of 540 FIRs filed in three districts of MP between 1 January 2018 and 31 December 2020 (inclusive). The FIRs were gathered from the open, publicly accessible MP Police Citizen Portal. Jabalpur and Bhopal were included in our study because they have the highest number of excise cases between 2018 and 2020 among all districts in MP. Betul was included in our study because it had the highest number of excise cases between 2018 and 2020 among Fifth Schedule districts in MP. We then selected the three police stations from each of the three districts which had registered the highest number of excise cases in the district during the period of our study.

The following are the police stations:

Bhopal	Aishbagh, Intkhedi, Ratidbadh
Betul	Betul Kotwali, Multai, Shahpur
Jabalpur	Belbagh, Bhedaghat, Ghamapur

Each of these FIRs was then perused to gather details about the specific offence; the age, gender, caste and religion of the accused; the quantity, value and type of alcohol involved; the source of the police's investigation; the site of the alleged offence; the occurrence of seizure, bail and arrest; and the police's stated reasons for accusing the individual.

Chapter 4:

**POLICE
PREOCCUPATION
WITH EXCISE-
RELATED ARRESTS**



This chapter examines the proportion of excise-related arrests among the total number of arrests across twenty districts in Madhya Pradesh (MP) from 2018-2020.

i. The Proportion of Excise-related Arrests

Previous research (53) has highlighted that the bulk of the police work falls within the category of order maintenance. Local policing cultures dictate what such order maintenance entails in terms of the laws that are relied upon by the police. Official crime records therefore capture these local policing priorities. The National Crime Records Bureau's ('NCRB') Crimes in India 2019 report shows that MP has the highest crime rate for offences charged under excise laws at 105.6 per 1,00,000 persons, the only state with a three-digit rate. Notably, as far as offences related to alcohol are concerned, MP is third only to Gujarat and Tamil Nadu, two states where the manufacture and sale of alcohol is significantly more regulated. (54) Even during the first phase of last year's coronavirus-induced lockdown, between 22 March and 31 May, excise-related offences contributed to nearly one-sixth of all arrests in MP.

We analysed the 5,62,399 arrest records uploaded by 20 districts between 1 January 2018 to 31 December 2020 to study the proportion of excise offences. (55) 17.38% of all arrests in the 20 districts were made under the Excise Act. This is a high percentage for an Act whose primary purpose is regulation, not penalisation. The arrests under this Act raise concerns about the widespread abuse of police discretion. For instance, a third (33%) of all arrests in Burhanpur district are for bailable offences under Section 34(1) of the Excise Act. The idea that cracking down on disorder may prevent crime has been rejected elsewhere. (56)

Over the last three years, the number of arrests has dipped in some districts and risen in others. However, the overall numbers for excise arrests have remained high. Despite a state-wide lockdown for several months in 2020, the average proportion of excise arrests in total arrests only decreased by 1.04% from 2019 (18.02%) to 2020 (16.98%). In Betul, Bhopal, Chhatarpur, Dewas, Jabalpur, Mandsaur, Raisen, Rajgarh, Rewa, Sagar, and Satna districts, arrest percentages decreased in 2020 (between 0.02 to 7.32%) from 2019. In Burhanpur, Chhindwara, Dhar, Gwalior, Indore, Ratlam, and Ujjain arrest percentages increased in 2020 (between 0.78 to 4.65%) from 2019.

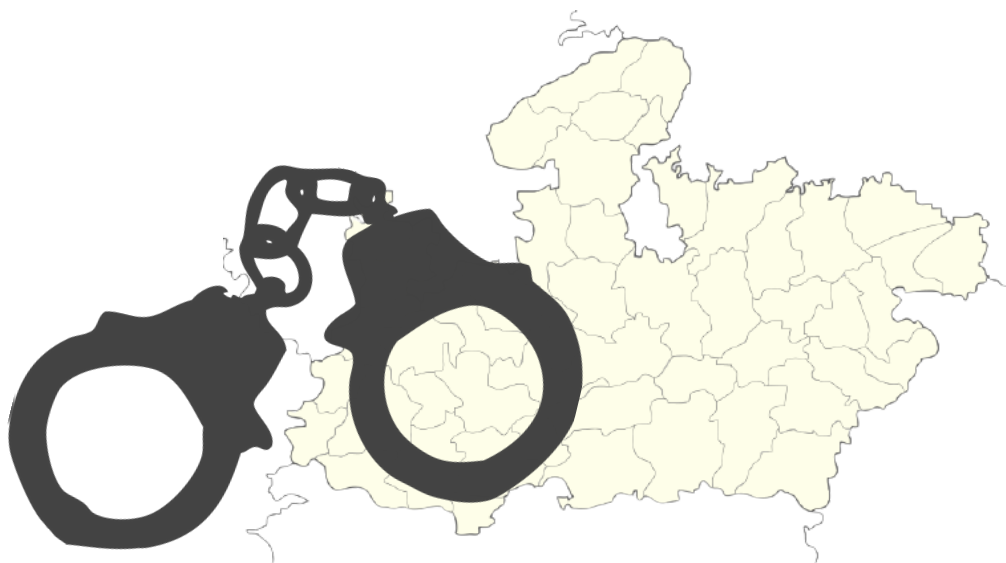
No.	District	Excise Arrests between 2018-2020
1	Betul	7946
2	Bhopal	7467
3	Burhanpur	3605
4	Chhatarpur	1621
5	Chhindwara	7431
6	Dewas	2749
7	Dhar	4450
8	Gwalior	4470
9	Indore	8349
10	Jabalpur	9710
11	Khargone	7193

No.	District	Excise Arrests between 2018-2020
12	Mandsaur	3991
13	Raisen	3395
14	Rajgarh	7979
15	Ratlam	4565
16	Rewa	3463
17	Sagar	5842
18	Satna	1000
19	Seoni	887
20	Ujjain	1628
	Total	97741

Figure 1.A: Total number of arrests under the Excise Act 2018-20

Arrest records for 20 districts

Source: MP Police Arrested Person Database



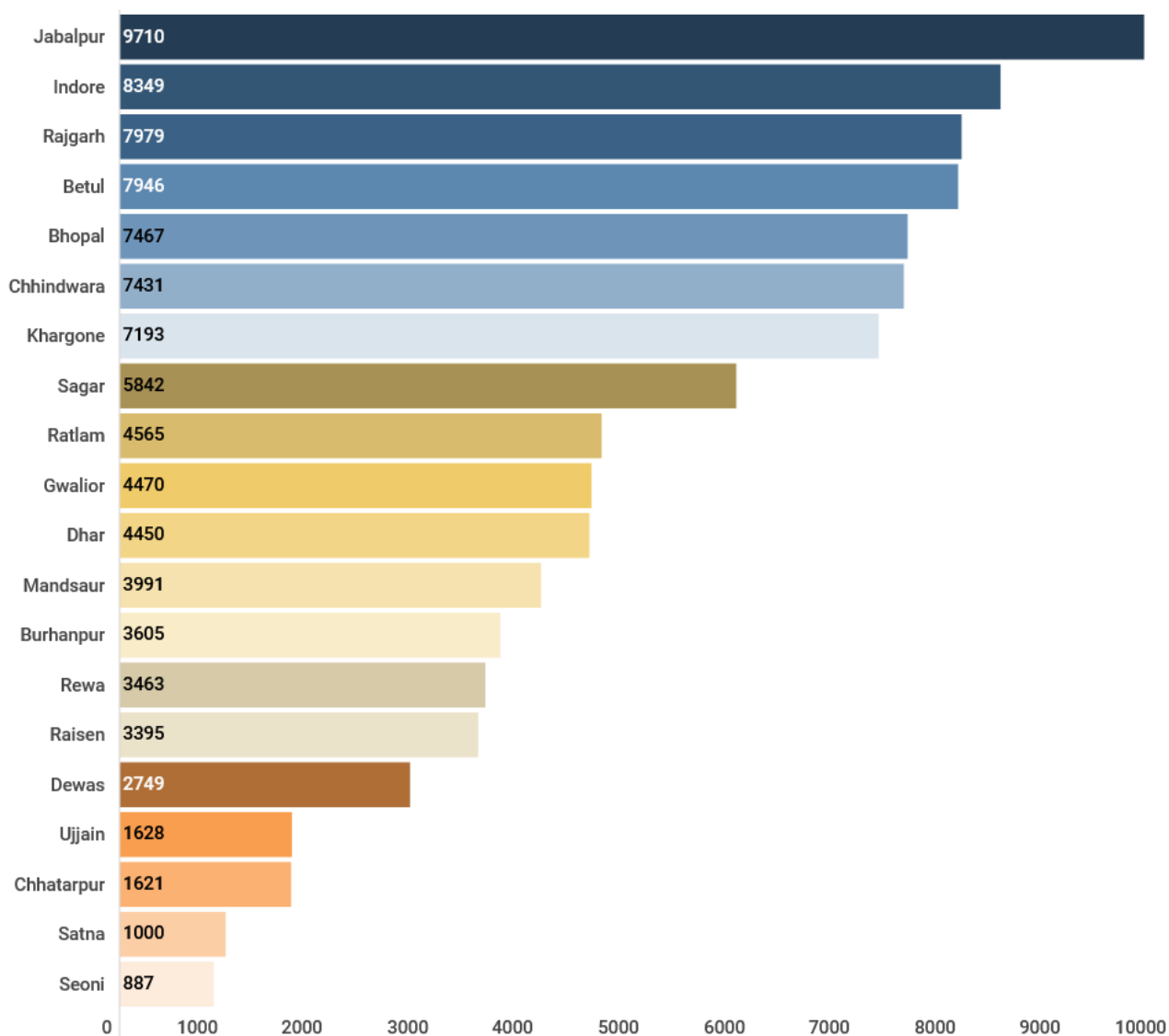


Figure 1.B: Total Number of arrests under the Excise Act 2018-20

Arrest records for 20 districts

Source: MP Police Arrested Person Database

District	% of Excise Arrests for 2018	% of Excise Arrests for 2019	% of Excise Arrests for 2020	% of Excise Arrests (Overall)
Betul	23.02%	29.23%	26.53%	26.63%
Bhopal	14.35%	14.14%	13.28%	13.98%
Burhanpur	33.79%	39.87%	43.84%	39.27%
Chhatarpur	24.51%	16.07%	8.75%	16.46%
Chhindwara	22.14%	22.22%	26.87%	23.77%
Dewas	7.53%	16.38%	12.99%	14.59%
Dhar	26.08%	23.12%	25.37%	24.83%
Gwalior	9.02%	8.37%	12.13%	9.74%
Indore	15.42%	13.31%	17.42%	14.57%
Jabalpur	17.55%	18.39%	17.18%	17.73%
Khargone	38.29%	32.68%	32.66%	34.34%
Mandsaur	16.92%	17.37%	12.72%	15.46%
Raisen	16.19%	16.83%	11.59%	15.36%
Rajgarh	19.77%	21.42%	18.83%	19.97%
Ratlam	16.54%	16.74%	17.52%	16.91%
Rewa	18.52%	8.15%	5.60%	11.78%
Sagar	20.60%	20.08%	13.39%	17.33%
Satna	18.04%	9.84%	8.38%	12.82%
Seoni	23.06%	9.54%	6.08%	17.28%
Ujjain	6.83%	6.64%	8.48%	7.31%
Total	17.71%	17.13%	17.29%	17.38%
Average	19.41%	18.02%	16.98%	18.51%

Figure 2.A: Proportion of Excise Arrests among total arrests 2018–20

Arrest records for 20 districts

Source: MP Police Arrested Person Database

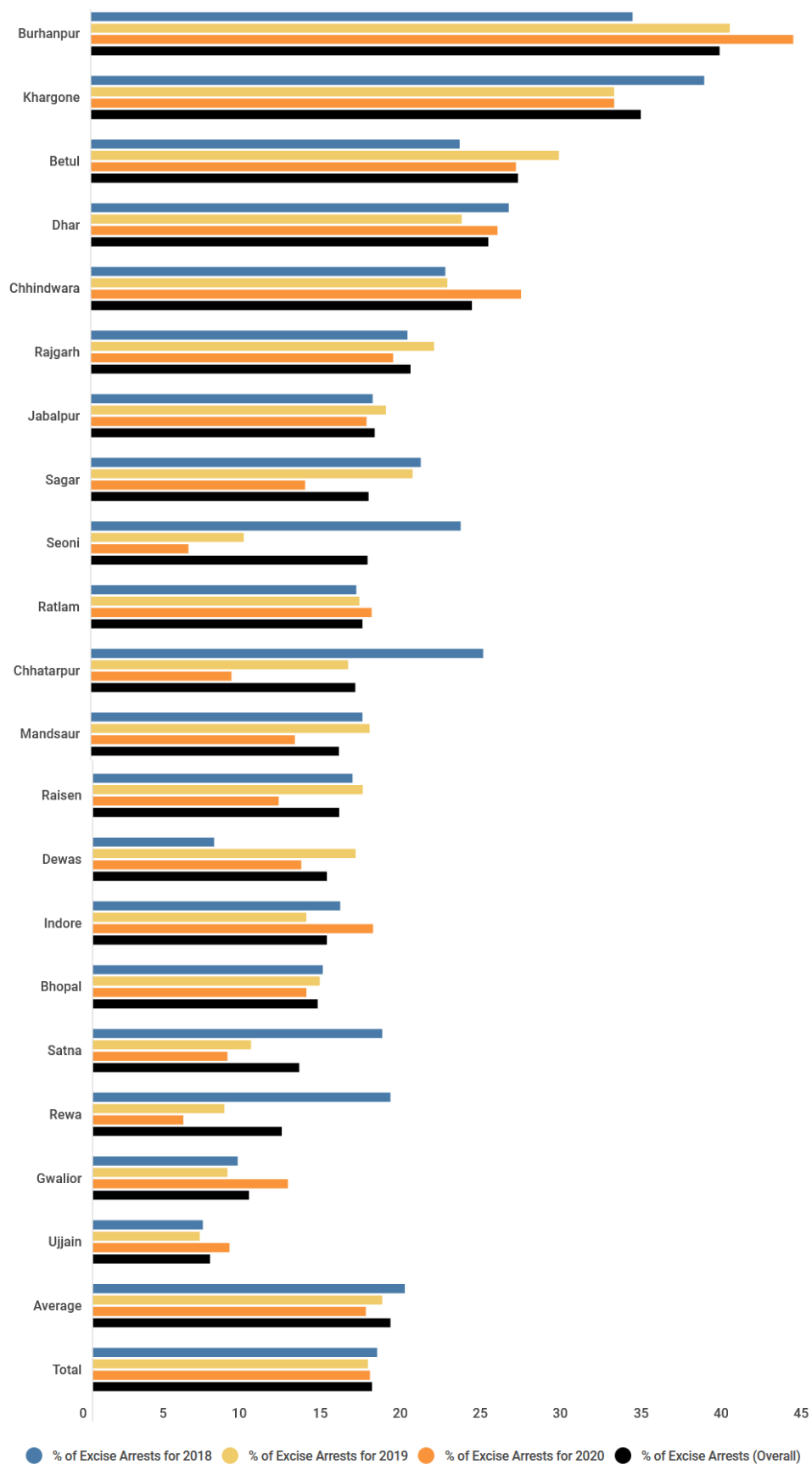


Figure 2.B: Proportion of Excise Arrests among total arrests 2018-20

Arrest records for 20 districts

Source: MP Police Arrested Person Database

ii. A Closer Look at Districts

Burhanpur had the highest proportion of excise arrests of total arrests in district for 2019 and 2020 with a steady average of 39.27% for arrests under the Excise Act. Interestingly, excise arrests in the district in 2020 far exceeded arrests for other types of crime by a significant margin at almost 44%, i.e., over two-fifths of all arrests in Burhanpur in 2020 were made under the Excise Act. Ujjain, on the other hand, had the lowest proportion of excise arrests in its data set (7.31% average). Ujjain's low proportions of excise arrests in 2018 and 2019 followed by Rewa's 5.60% in 2020 were the lowest proportions of arrests made under the Excise Act. This shows us that excise offences are not policed uniformly in districts; in some districts they form a large proportion of policing activity but in others they comprise a smaller set of total arrests. Betul, Chhindwara, Dhar, and Khargone recorded over 20% arrests under the Excise Act. Each of these districts has some area designated as a Fifth Schedule area. One question may arise: Does excise policing disproportionately target Adviasi communities? The answer is not straightforward. In Burhanpur excise arrests comprise over 20% of total arrests, but no areas of the district are designated as Fifth Schedule areas. Some areas in Ratlam and Seoni are designated as Fifth Schedule areas and have relatively low proportions of excise arrests. One possible explanation could be that geography influences policing priorities: for instance, Betul, Burhanpur, Chhindwara, Dhar, and Khargone are adjacent to one another in the southern part of MP and excise arrests are relatively higher in this region. However, this is a superficial correlation; a stronger finding will need to analyse this correlation for all districts and over a longer time period.

Seoni along with Satna and Chhatarpur contributed the least to the overall excise arrest figures in the districts. Excise arrests from Jabalpur constituted nearly 10% (9.93%) of the total excise arrests, closely followed by Indore and Rajgarh at 8.54% and 8.16% respectively. Burhanpur had a *higher proportion* of excise arrests; however Jabalpur, Indore, and Rajgarh had the *highest numbers* of excise arrests (9,710, 8,349, and 7,979 for Jabalpur, Indore, and Rajgarh respectively in comparison to 3,605 for Burhanpur).

District	Overall Excise Arrests	Percentage-wise break-up of District Excise Arrests to Total Excise Arrests [eg: Excise Arrests in Betul (7946)/Total Excise Arrests (97741)*100]	Police Station with Highest % of Excise Arrests in the District	% of excise arrests in the Police stations
Betul	7946	8.13%	Bijadehi	41.46%
			Chopna	40.40%
			Ranipur	39.36%
Bhopal	7467	7.64%	Parbalia Sadak	41.10%
			Sukhi Sevania	29.68%
			Awadhपुरी	27.11%
Burhanpur	3605	3.69%	Khaknar	57.33%
			Shikarpura	52.41%
			Lal Bag	40.37%
Chhattarpur	1621	1.66%	Shahgarh	47.06%
			Hinota	44.74%
			Bajna	40.58%
Chhindwara	7431	7.60%	Navegaon	40.05%
			Lawa Ghoghri	36.94%
			Chourai	34.73%
Dewas	2749	2.81%	Harangaon	25.17%
			Kantaphod	22.18%
			Bank Note Press	21.91%
Dhar	4450	4.55%	Mandav	50.20%
			Dahi	38.74%
			Rajod	35.84%
Gwalior	4470	4.57%	Aron	20.00%
			Crime Branch	18.60%
			Behat	18.24%

Indore	8349	8.54%	Khudel	28.53%
			Rau	27.01%
			Sanwer	24.45%
Jabalpur	9710	9.93%	Bel Bag	36.87%
			Ghamapur	31.89%
			Katangi	29.38%
Khargone	7193	7.36%	Mandleshwar	57.18%
			Bhagwanpura	50.13%
			Chainpur	46.90%
Mandsaur	3991	4.08%	Gandhi Sagar	28.04%
			Malhargargh	23.24%
			Narayangargh	21.45%
Raisen	3395	3.47%	Devnagar	29.84%
			Bharkachh	26.23%
			Deori	23.51%
Rajgarh	7979	8.16%	Karanwas	41.58%
			Dehat Biaora	33.12%
			Malawar	32.48%
Ratlam	4565	4.67%	Shivgarh	29.68%
			Badbada	28.21%
			Barkheda	26.30%
Rewa	3463	3.54%	Chakghat	27.05%
			Janeh	23.53%
			Sohagi	17.92%
Sagar	5842	5.98%	Chanbila	51.89%
			Civil Lines	49.53%
			Maharajpur	46.65%
Satna	1000	1.02%	Badera	32.30%
			Dehat Satna	26.53%
			Barundha	26.44%

Seoni	887	0.91%	Ari	38.22%
			Kindari	34.48%
			Ugli	29.67%
Ujjain	1628	1.67%	Kaytha	26.09%
			Chintaman Ganesh	20.45%
			Raghvi	17.26%

Figure 3: District-wise proportions of the total excise arrests in MP

Arrest records for 20 districts

Source: MP Police Arrested Person Database

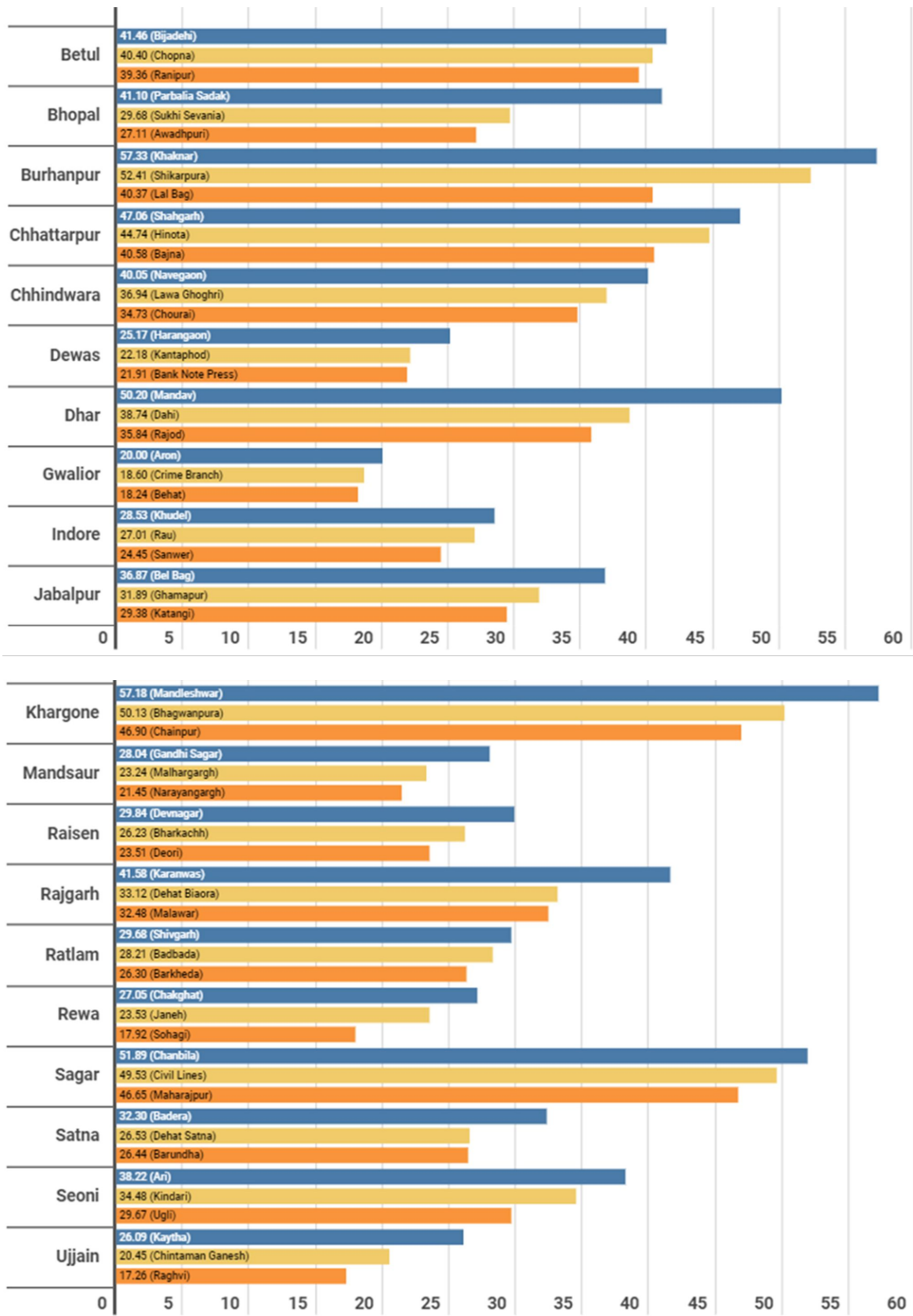


Figure 4: Police stations in each district with the highest proportion of excise arrests

Arrest records for 20 districts

Source: MP Police Arrested Person Database

We further analysed the proportions of excise arrests to overall arrests at the level of police stations. We found that the average proportion of excise arrests in MP (18.51%) invisibilised wide disparities in policing practices. Excise policing practices significantly varied even amongst police stations of the same district. Khaknar (57.33%) and Shikarpura (52.41%) police stations in Burhanpur; Mandleshwar (57.18%) and Bhagwanpura (50.13%) police stations in Khargone; Chanbila (51.89%) police station in Sagar; and Mandav (50.20%) police station in Dhar had a higher proportion of excise arrests. These high proportions for excise arrests raise key questions about the nature of policing.

iii. 'Serious' Offences?

Arrests under Section 34(1) were relatively far higher than arrests under other sections of the Act. After Section 34(1), Section 34 *simpliciter* (without any detail of the specific subsection) comprised the second - largest proportion of excise arrests.

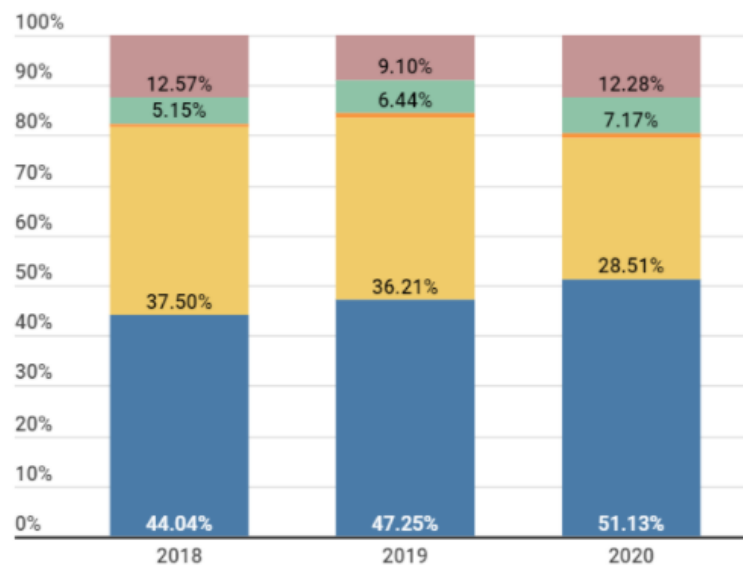
Sections 34(1) and 34(2) are differentiated by the quantity of liquor allegedly involved. Offences under Section 34(1) are bailable, and those under 34(2) are non-bailable. The arrests made under Section 34 without further details of the operative clause prevent us from determining whether arrests were made for bulk quantities of alcohol or not, and therefore, whether these arrests were bailable or non-bailable. Mandsaur, Dewas and Rajgarh overwhelmingly relied on arrests under Section 34 *simpliciter*, with over 80% of their arrests under this Section. This is worrying - ambiguity and vagueness in allegations undermine the fair trial rights of an accused; it broadens the scope for entrapment of an individual, especially since one of the provisions under Section 34 is non-bailable.

	Total Number of Excise Arrests for 2018	% of Excise Arrests for 2018	Total Number of Excise Arrests for 2019	% of Excise Arrests for 2019	Total Number of Excise Arrests for 2020	% of Excise Arrests for 2020	Total Number of Excise Arrests (Overall)	% of Excise Arrests (Overall)
Section 49-A	255	0.74%	337	1.00%	268	0.91%	860	0.88%
Section 34(2)	1772	5.15%	2178	6.44%	2114	7.17%	6064	6.20%
Section 34(1)	15168	44.04%	15986	47.25%	15069	51.13%	46223	47.29%
Section 34	12914	37.50%	12251	36.21%	8401	28.51%	33566	34.34%
Others	4330	12.57%	3080	9.10%	3618	12.28%	11028	11.28%
Total	34439	100.00%	33832	100.00%	29470	100.00%	97741	100.00%

Figure 5: Proportion of arrests under various sections of the Excise Act

Arrest records for 20 districts

Source: MP Police Arrested Person Database

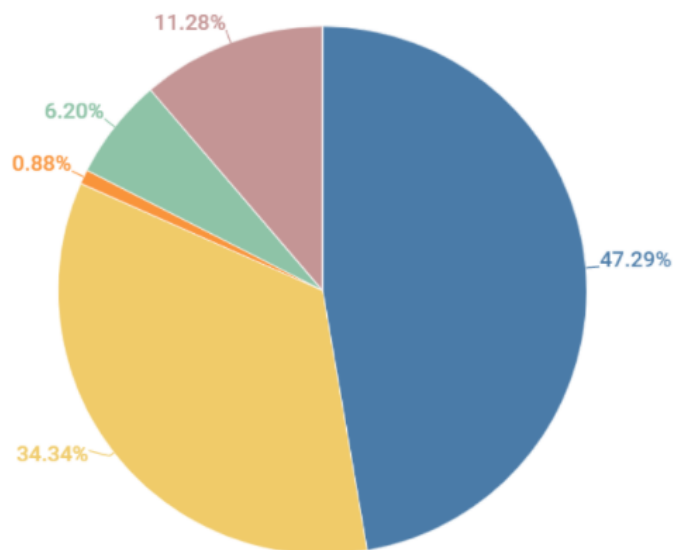


● Section 34(1) ● Section 34 ● Section 49-A ● Section 34(2) ● Others

Figure 6.A: Sections of the Excise Act invoked for arresting accused persons (year wise, 2018 - 2020)

Arrest records for 20 districts

Source: MP Police Arrested Person Database



● Section 34(1) ● Section 34 ● Section 49-A ● Section 34(2) ● Others

Figure 6.B: Sections of the Excise Act invoked for arresting accused persons (overall, 2018 - 2020)

Arrest records for 20 districts

Source: MP Police Arrested Person Database

	2018	2019	2020	Overall
Section 49-A	0.02%	0.21%	0.40%	0.16%
Section 34(2)	4.66%	6.00%	6.99%	5.63%
Section 34(1)	43.51%	58.34%	26.17%	56.34%
Section 34	43.63%	31.97%	20.17%	37.06%
Others	5.51%	6.01%	7.26%	6.52%

Figure 7.A: Median proportion of arrests under various sections of the Excise Act 2018-20

Arrest records for 20 districts

Source: MP Police Arrested Person Database

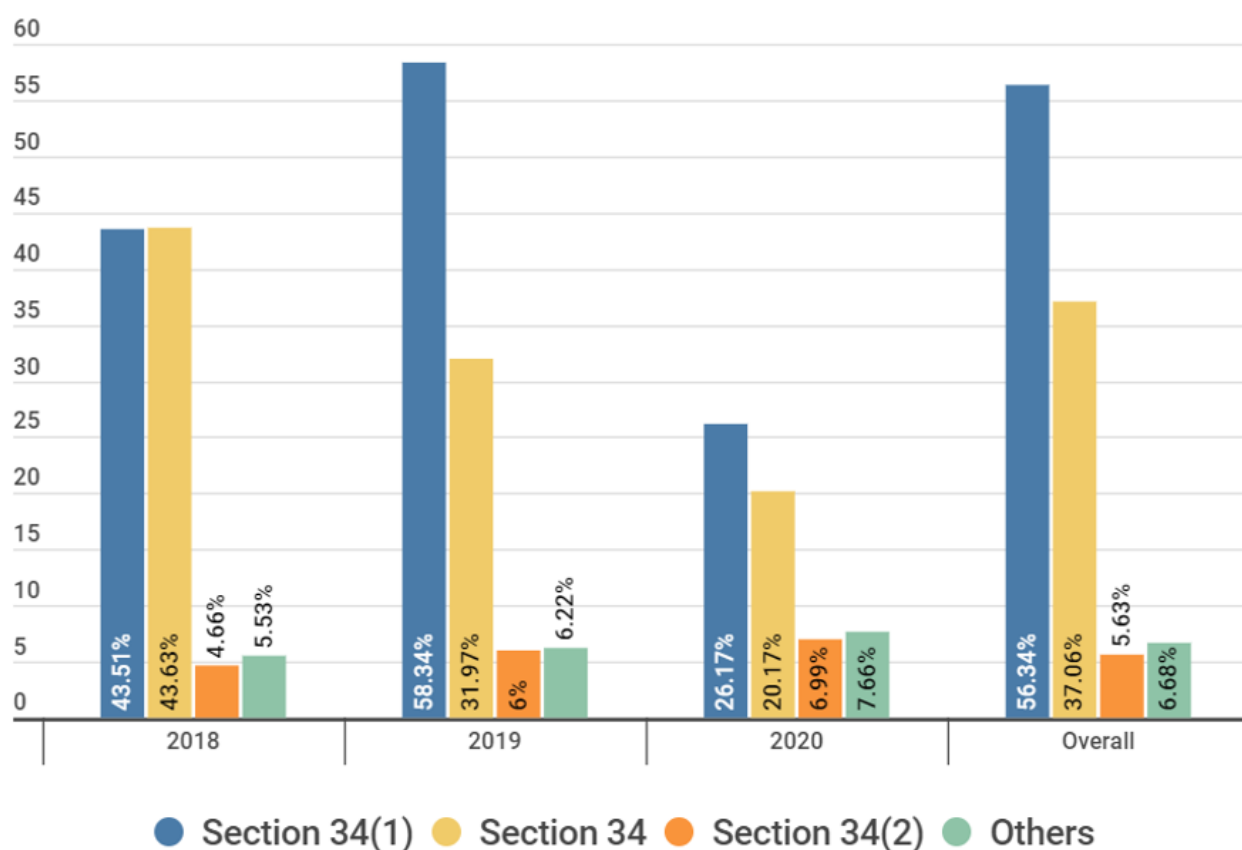


Figure 7.B: Median proportion of arrests under various sections of the Excise Act 2018-20

Arrest records for 20 districts

Source: MP Police Arrested Person Database

Median calculations of the number of times each section was invoked suggests that most arrests were made under Section 34(1) (56.34%) of the Excise Act. Over 90% of all excise arrests in Betul and Khargone were made under Section 34(1). Arrests under Section 34(1) constituted 25.15% and 31.38% of *all arrests* in Betul and Khargone respectively; more than a quarter of all persons arrested in Betul and Khargone were accused only of violating Section 34(1). Section 34(1) offences, unlike Section 34(2) and 49-A offences, are bailable. A high number of arrests for bailable offences suggests that the *Aradesh Kumar* guidelines are not being followed.

Within the excise regime, offences under Sections 34(2) and 49-A are regarded as serious offences. Section 34(2), concerning bulk quantities of liquor (>50 litre), was most frequently invoked in Satna (20.90%), Chhatarpur (19.68%), Ujjain (14.37%), and Gwalior (11.07%).

Section 49-A concerns alcohol found unfit for human consumption (spurious) and can in some cases carry a life sentence (for repeat offences of causing death through consumption). (57) In Gwalior, 8.72% of arrests were made under Section 49-A. All other districts studied had a significantly lower proportion of Section 49-A arrests. The police in Betul, Burhanpur, Chhatarpur, Chhindwara, and Rajgarh made no arrests under just Section 49-A between 2018 and 2020; however it was invoked along with other offences under the Excise Act in some districts. The low rates of policing under Section 49-A is consistent with our findings on the use of this provision in the FIRs as well.

The Others category includes offences under Sections 36, 36-A, 36-B and 36-C of the Excise Act and a combination of offences under these Sections with other offences under the Excise Act or with different Acts such as the IPC and Motor Vehicles Act. In all districts other than Bhopal, the 'Others' category offences did not exceed 15.5%. In Bhopal, two sections were primarily used while arresting individuals under the Excise Act—Sections 34 *simpliciter* and 36-B. Both accounted for approximately the same proportion of excise arrests—43%. Section 36-B penalises individuals found drunk or drinking in a common drinking house, or being found in such a place for the purpose of drinking. As we will discuss in the following sections on the FIR analysis, we suspect improper use of this provision to penalise and arrest individuals for public drinking.

	Section 34(1)		
District	Number of arrest records	% of excise arrests	% of total arrests
Betul	7506	94.46%	25.15%
Bhopal	164	2.20%	0.31%
Burhanpur	3058	84.83%	33.31%
Chhatarpur	331	20.42%	3.36%
Chhindwara	6033	81.19%	19.30%
Dewas	102	3.71%	0.54%
Dhar	2661	59.80%	14.85%
Gwalior	633	14.16%	1.39%
Indore	1576	18.88%	2.75%
Jabalpur	7464	76.87%	13.63%
Khargone	6574	91.39%	31.38%
Mandsaur	222	5.56%	0.86%
Raisen	1802	53.08%	8.16%
Rajgarh	220	2.76%	0.55%
Ratlam	72	1.58%	0.27%
Rewa	2881	83.19%	9.80%
Sagar	3481	59.59%	10.32%
Satna	726	72.60%	9.30%
Seoni	709	79.93%	13.81%
Ujjain	8	0.49%	0.04%

Figure 8: Number of Arrests for bailable offences under Section 34(1) of the Excise Act
Arrest records of 20 districts

Source: MP Police Arrested Person Database

	Section 34			Others		
District	Number of arrest records	% of excise arrests	% of total arrests	Number of arrest records	% of excise arrests	% of total arrests
Betul	24	0.30%	0.08%	253	3.18%	0.85%
Bhopal	3280	43.93%	6.14%	3631	48.63%	6.80%
Burhanpur	34	0.94%	0.37%	422	11.71%	4.60%
Chhatarpur	904	55.77%	9.18%	67	4.13%	0.68%
Chhindwara	26	0.35%	0.08%	1104	14.86%	3.53%
Dewas	2441	88.80%	12.96%	82	2.98%	0.44%
Dhar	1501	33.73%	8.38%	51	1.15%	0.28%
Gwalior	2651	59.31%	5.81%	301	6.73%	0.63%
Indore	4515	54.08%	7.88%	1251	14.98%	2.18%
Jabalpur	229	2.36%	0.42%	1464	15.08%	2.67%
Khargone	102	1.42%	0.49%	179	2.49%	0.85%
Mandsaur	3467	86.87%	13.43%	43	1.08%	0.17%
Raisen	1371	40.38%	6.20%	106	3.12%	0.48%
Rajgarh	6663	83.51%	16.68%	775	9.71%	1.94%
Ratlam	3598	78.82%	13.33%	485	10.62%	1.80%
Rewa	69	1.99%	0.23%	218	6.30%	0.74%
Sagar	1452	24.85%	4.31%	323	5.53%	0.96%
Satna	8	0.80%	0.10%	52	5.20%	0.67%
Seoni	17	1.92%	0.33%	82	9.24%	1.60%
Ujjain	1214	74.57%	5.45%	139	8.54%	0.62%

Figure 9: Number and Proportion of Arrests for offences under Section 34 and other sections of the Excise Act

Arrest records for 20 districts

Source: MP Police Arrested Person Database

	Section 49-A			Section 34(2)		
District	Number of arrest records	% of excise arrests	% of total arrests	Number of arrest records	% of excise arrests	% of total arrests
Betul	0	0.00%	0.00%	163	2.05%	0.55%
Bhopal	17	0.23%	0.03%	375	5.02%	0.70%
Burhanpur	0	0.00%	0.00%	91	2.52%	0.99%
Chhatarpur	0	0.00%	0.00%	319	19.68%	3.24%
Chhindwara	0	0.00%	0.00%	268	3.61%	0.86%
Dewas	1	0.04%	0.01%	123	4.47%	0.65%
Dhar	14	0.31%	0.08%	223	5.01%	1.24%
Gwalior	390	8.72%	0.63%	495	11.07%	0.79%
Indore	263	3.15%	0.46%	744	8.91%	1.30%
Jabalpur	28	0.29%	0.05%	525	5.41%	0.96%
Khargone	2	0.03%	0.01%	336	4.67%	1.60%
Mandsaur	26	0.65%	0.10%	233	5.84%	0.90%
Raisen	3	0.09%	0.01%	113	3.33%	0.51%
Rajgarh	0	0.00%	0.00%	321	4.02%	0.80%
Ratlam	62	1.36%	0.23%	348	7.62%	1.29%
Rewa	6	0.17%	0.02%	289	8.35%	0.98%
Sagar	9	0.15%	0.03%	577	9.88%	1.71%
Satna	5	0.50%	0.06%	209	20.90%	2.68%
Seoni	1	0.11%	0.02%	78	8.79%	1.52%
Ujjain	33	2.03%	0.15%	234	14.37%	1.05%

Figure 10: Number and Proportion of Arrests for offences under Sections 49-A and 34(2) of the Excise Act

Arrest records for 20 districts

Source: MP Police Arrested Person Database

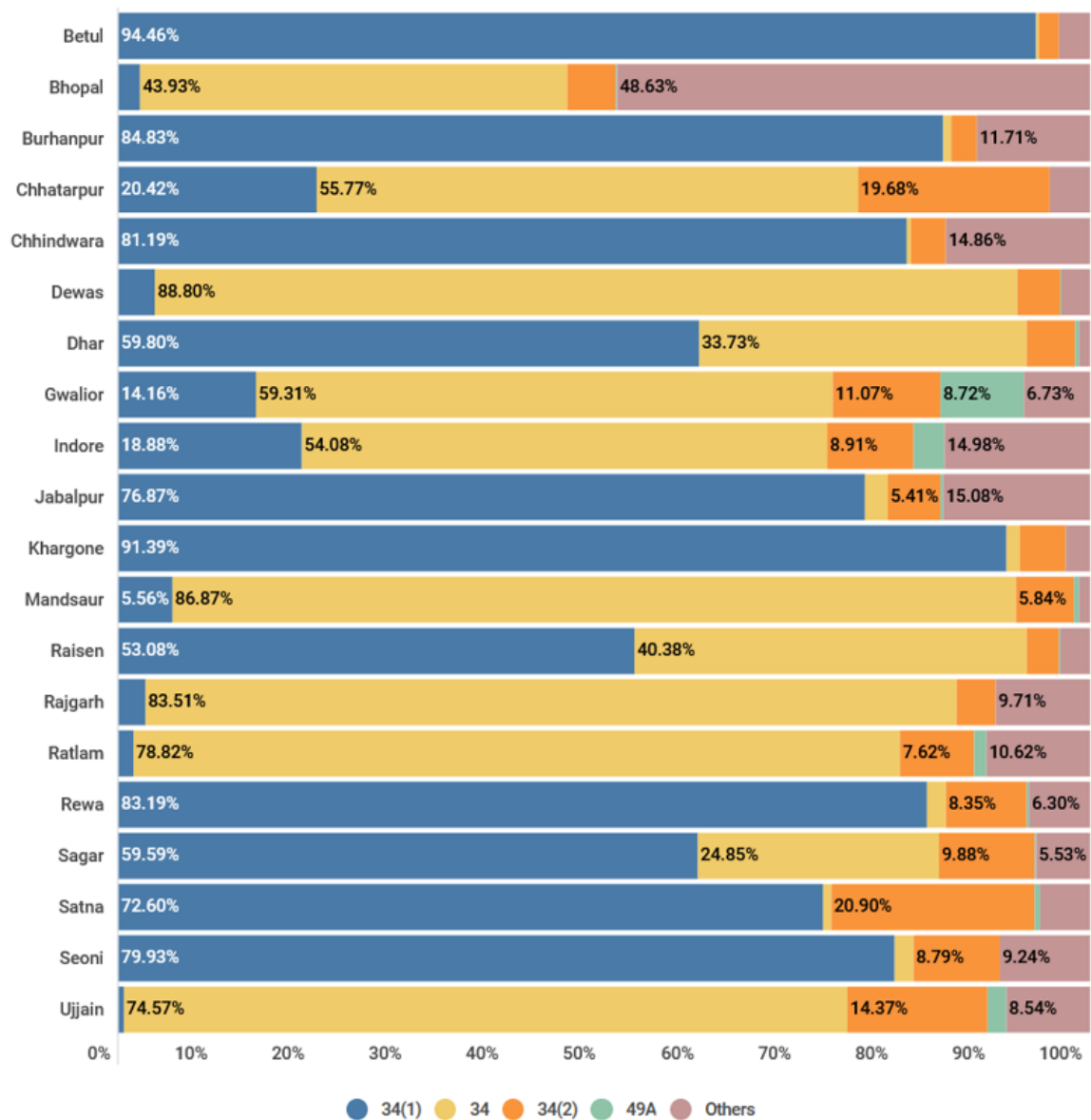


Figure 11: Number of Arrests for offences under Sections 34, 34(1), 34(2), 49-A and other sections of the Excise Act.

Arrest records for 20 districts

Source: MP Police Arrested Person Database

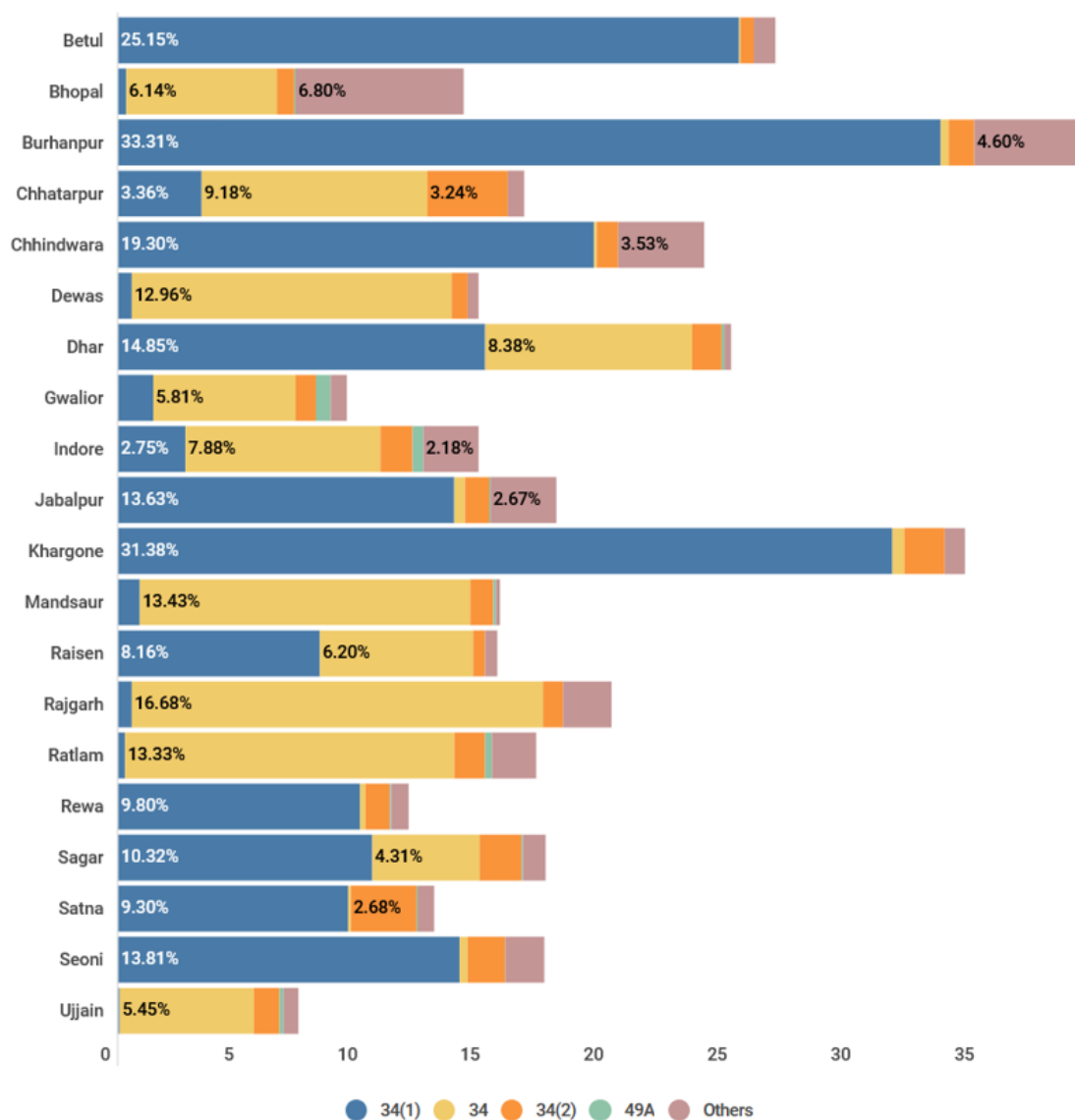


Figure 12: Number of Arrests for offences under Sections 34, 34(1), 34(2), 49-A and other sections of the Excise Act (including other IPC and other special Acts)

Arrest records for 20 districts

Source: MP Police Arrested Person Database

It must also be noted that offences under Section 34(2) and 49-A are more 'serious' within the excise regime; however, they would fail to be considered serious in the larger scheme of our criminal justice system, which makes a distinction between offences punishable by over seven years of imprisonment and those punishable by seven years or less; arrest is not the prescribed course of police action for the latter set of offences. The Supreme Court has provided a clear set of guidelines to avoid arrests in trivial matters. In *Arnesh Kumar v State of Bihar* (58) the Supreme Court held that unless the police have the reason to believe that there is a possibility that the accused will commit further offence, or could tamper with evidence or induce witnesses, or their presence before court cannot be ensured unless they are kept in custody, arrest should not be made. The arrest must be made only when police have the reason to believe, and are satisfied that any of the circumstances enshrined under Section 41(1) of the Code of Criminal Procedure (CrPC) are met. The judgment states that before making an arrest, the police should refer to the checklist with the conditions prescribed under Section 41(1)(b)(ii) of CrPC to see whether arrest is necessary and then furnish such a report to the Magistrate who must then authorise detention, after recording that arrest is necessary. These guidelines safeguard the right to life and liberty of the accused enumerated under Article 21 of the Indian Constitution. However, a gap lies in the discretion bestowed upon the police officer filing the Section 41A notice of appearance (as it is called) or making the arrest. Police compliance with checklists has not been subject to robust judicial scrutiny; comparing the proportion of arrests and 41A notices issued to the total number of accused in all FIRs over a given period is a likely metric for checking compliance of these guidelines. Regrettably, our past research has found that even during the pandemic, the police preferred arrests over issuing section 41A notices. (59)

Chapter 5:

CASTE AND GENDER PROFILES OF THE POLICED

*An analysis of arrest records
and FIRs*



This chapter briefly outlines the colonial legacy of criminalising Vimukta communities through the police-facilitated myths of the 'hereditary' and 'habitual' criminal. It analyses arrest records and the FIRs to highlight the over-representation of specific marginalised communities among the individuals policed for excise-related offences. It also studies how caste and gender intersect to preserve the myth of criminality of Vimukta women, and provides evidence of their disproportionate criminalisation.

Marginalised caste communities are overrepresented in prisons. The Prison Statistics of India, 2019 reveals that 21% and 11% of the incarcerated individuals in India's prisons belong to the SC and ST communities respectively. In total, they comprise 34% of the prison population in India; however, both communities comprise only 24% of the country's population. The 2016 Death Penalty India Report also reveals that 24.5% of prisoners sentenced to death belonged to the SC and ST communities. In states such as Maharashtra and MP, the proportion of prisoners from these two communities who have been sentenced to death row is 50% and 36% respectively. Such over-representation is due to systemic problems in the criminal justice system, all of which begin with the problem of over-policing of these communities under outdated laws to enforce casteist and capitalist forms of social control.

i. Historical Criminalisation of Vimukta Communities

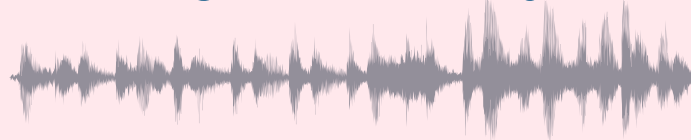
Policing in India was founded by the British imperial government to control, coerce and surveil certain targeted subjects. This strategy of targeted policing was evolved to address the quandary of a small police force controlling a large native population. Therefore, social groups within the working class were identified and targeted as 'proper objects of policing'. The caste system readily offered its consensus for which social groups were to be these objects of policing. This targeted policing strategy achieved its zenith with the enactment of the now-repealed Criminal Tribes Act (CTA), 1870, which characterised several nomadic and semi-nomadic tribes as 'hereditary criminals', pinning the blame of all instances of specific crimes (both actual and those constructed by the police) on the individuals of these 'criminal' communities.

Despite the CTA being repealed, the stigma of criminality continues to plague Vimukta communities through modern policing practices. The police disproportionately accuse individuals belonging to Vimukta communities of committing crimes.

Their high representation amongst the accused is then offered as a circular rationale to maintain and reinforce their alleged criminality. Individuals from Vimukta communities are also disproportionately labeled and surveilled by the police under the MP Police Regulations, which grant the police wide discretionary powers to identify “habitual offenders”.

According to the 2011 census, the percentage of SC and ST populations is 16% and 21% in MP, respectively. There is no official data regarding the total population of Vimukta, nomadic, and semi-nomadic tribes, but informal estimations peg their population between 50 and 60 lakh (around 10 % of MP’s population). (60)

Casteist Policing of the Kanjar community



Gautam Bijoriya (name changed) is an activist from the Kanjar community in Berasiya tehsil, Bhopal. He tells us that the Kanjar community has been settled in the Berasiya since independence, after migrating from Rajasthan. The community’s traditional profession is the manufacture of alcohol. However, stigmatisation from their former branding as a ‘criminal tribe’ has denied them employment and led to debt entrapment. Some Kanjar families own between one to two acres of land. The community also does not receive adequate state support to pursue higher school education. The Kanjars are recognised as a Scheduled Caste in MP. However, the district administration does not recognise the inhabitants of Berasiya as Kanjars, instead recognising them as Bijoriya. This has denied the Kanjars in Berasiya protection under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and access to welfare schemes.

Official narratives

Some Kanjar families have been compelled by poverty to take up thievery and robbery. Gautam recalls that senior administrative and police officials had once visited the Kanjars’ village around 35 years ago and asked the community to give up crime. The community retorted that they would give up crime if the administration could ensure employment. The officials, however, incorrectly reported to the state government that the community had claimed thieving as a right and their *dharm*, and that if the men did not steal, they would not find a bride.

Police targeting of Kanjar youth

Gautam states that the first Kanjar to pass 8th grade from their village was arrested by the police, who were averse to the likelihood of a Kanjar person gaining any social capital or skills for employment. This individual's picture was hung at the local police station with the quote, "*Mera naam [X] hai aur main aparadhi hu.* [My name is X and I am a criminal]." He recalls that when he was 14 years old, he was once apprehended in Berasiya town and accused of stealing a cycle. His picture was taken and displayed on a board inside the police station. Upon learning this information, he was so scared that he dropped out of school and refused to leave his village for the town.

A case against every family in the community

Gautam says that of the 70-80 families in his village, every family has a case filed against *at least* one member. Men from the Kanjar community fear going to the market because most people are arrested from the market. He also adds that every Kanjar woman in his village has been booked in a case. Until a few years ago, community members were disproportionately and unjustly booked under IPC offences for thefts and robberies or for possession of an unlawful knife under the Arms Act (another offence easy to frame people). Since the past 2-3 years, community members are being booked for excise offences under pressure put on the police by liquor shop owners. Gautam states that the police predominantly utilise Sections 34(1), 34(2) and 49-A of the Excise Act. When an individual is booked under Section 34(1) they must pay a fine of ₹2,000 - ₹3000. Individuals booked under Sections 34(2) or 49-A have only been released on bail by the MP High Court and never by the subordinate courts. When the bail application is filed before the High Court, the police take weeks to submit case documents, further delaying bail.

Police rampage and brutality

Before the pandemic, the police used to visit Gautam's village only 3-4 times every year because it is remote. Other Kanjar villages closer to the main road are visited by the police every month. He says that 35 years ago, the police had visited a neighbouring Kanjar village, injured a pregnant woman and forced her to miscarry. Angered, the community attacked and injured 15 police persons. The police also called for any 5 people to surrender for an "*encounter*" (extrajudicial murder). The 5 persons who surrendered were eventually acquitted after 6-7 years of incarceration.

When the police lay siege to a Kanjar village, they take poultry, goats, and a large amount of money as bribes. The police charge lakhs, through middlemen, for not implicating individuals under a serious excise offence or for theft and robbery. When people are detained, they are beaten up, stripped of their clothes and denied water in the lock up.

A Kanjar man, Tulsidas, was also killed in police custody in May, 2020. Tulsidas's family had taken a car to the Berasiya town to make preparations for a wedding. The police detained Tulsidas while they were getting petrol, and brutally assaulted him. According to news reports (61), the Assistant Sub-Inspector Yadav was also a perpetrator. Tulsidas was booked for an offence under the Excise Act and sent to Bhopal Central Jail where he died of his injuries. Gautam says that the police are yet to register a case, and that Tulsidas' family does not know if there was ever even a Magisterial Inquiry, a legal mandate.

ii. Over-representation of Marginalised Castes

a. First Information Reports

Given the casteist and colonial institutional origins of policing; the caste system's continued pervasive role in shaping the prejudices and norms of Indian society; and the legacy and intent of excise laws, it is no surprise that individuals from oppressed castes are disproportionately represented in our data set. We studied 540 FIRs as part of our study, in which 562 individuals were accused of having committed offences under the Excise Act. We relied on these individuals' surnames to determine their social location within the caste hierarchy.

14% of the accused individuals were SCs, 15% were STs, 16% were OBCs, and 11% were Vimukta communities. The total proportion of accused individuals from oppressed caste communities and other marginalised groups is *at least 56%*. The 'actual' number of marginalised individuals implicated in FIRs is likely higher, given that 4% of the accused belong to Possibly Marginalised groups (last names used exclusively by at least two marginalised communities and no oppressor castes), 3% of the FIRs did not mention the individuals' surnames at all 'Zero', 9% of the FIRs contained last names that were 'Unclassified' (i.e. could not be classified despite our rigorous search) and that 19% of the FIRs contained last names that are Maybe General (i.e. last names used by a marginalised community and an oppressor caste).

While we can't determine the caste identities of 12% of the individuals accused in the FIRs (comprising the 'Unclassified' and 'O'), these individuals are not 'caste-less', and may well belong to marginalised communities, subject to all disadvantages that such belonging implies, and be identifiable as such to the police machinery through channels that are not captured in an FIR.

Similarly, some proportion of the 19% 'Maybe General' individuals are likely members of marginalised communities; it is only that we as researchers have chosen to err on the side of caution and precision by highlighting the ambiguity rather than erroneously resolving it. The 4% 'Possibly Marginalised' population does indeed further our argument, but only in broad terms.

Since part of our attempt in conducting this study consists in not merely making general assertions about the oppression of marginalised communities by the criminal justice system, but also explicating how the experiences of discrete marginalised communities differ based on their unique histories and contexts, it would be a mistake to lump the data together under a single umbrella.

Therefore, again, we have chosen to underscore ambiguity and complexity rather than obfuscate them, which, ultimately, in our opinion, captures the on-ground reality of caste oppression best.

Indeed, Jabalpur presents an apposite instance for demonstrating overrepresentation. Juxtaposing the proportion of SC population in Jabalpur (14%) with the proportion of SC individuals against whom FIRs have been filed (48%), we notice an enormous gap best explained by the fact that the Kuchbandhiyas, a Vimukta community which has been discussed in much greater detail elsewhere and which is administratively classed as SC, comprise a disproportionately targeted population in one of the police stations in the district. Another telling case is Bhopal: while the number of accused ST individuals at first glance seems low at 5%, it is almost twice the proportion of STs in Bhopal's population.

District	SC (FIR%)	ST (FIR%)	OBC (FIR %)	Vimukta (FIR %)	Possibly Marginalise d (FIR %)	Maybe General (FIR %)	General (FIR %)	Unclassified (FIR %)	Zeros (FIR %)
Betul	9.34%	38.46%	15.38%	0%	3.85%	9.89%	7.14%	14.83%	1.1%
Bhopal	13.57%	3.52%	12.56%	5.53%	6.53%	30.15%	12.56%	10.05%	5.53%
Jabalpur	20.44%	3.31%	20.44%	27.62%	1.1%	14.92%	8.84%	1.1%	2.21%
Total	14.41%	14.77%	16.01%	10.85%	3.91%	18.68%	9.61 %	8.72%	3.02%

Figure 13.A: Caste locations of the individuals accused in the FIR dataset

FIRs dataset of 3 districts

Source: MP Police Citizen Portal

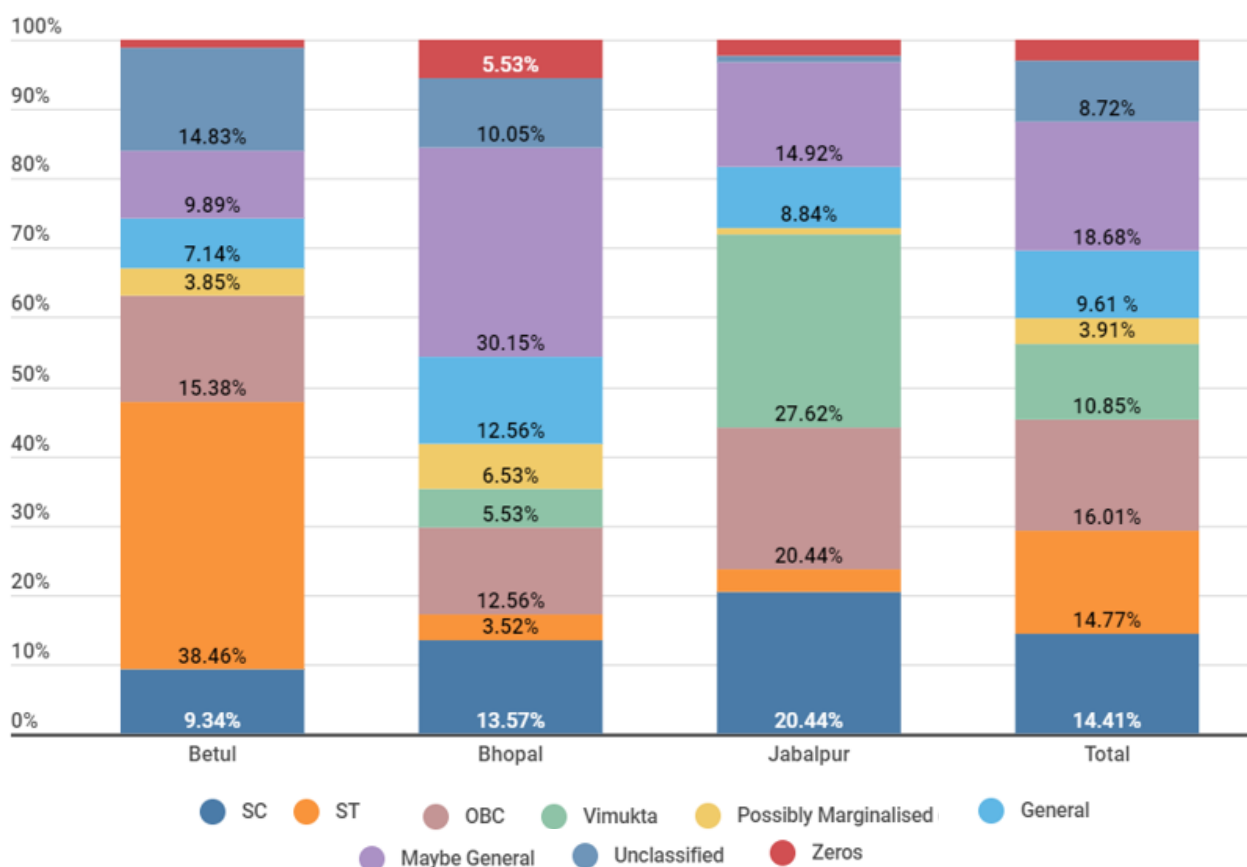


Figure 13.B: Caste locations of the individuals accused in the FIR dataset

FIRs dataset of 3 districts

Source: MP Police Citizen Portal

District	SC Population including Vimukta communities categorised as SC by state (MP 2011 Census) (%)	SC Accused Persons in FIRs (SC + Vimukta communities categorised as SC by state administratively) (FIRs) (%)	ST Population including Vimukta communities categorised as SC by state (MP 2011 Census) (%)	ST Accused Persons in FIRs (ST + Vimukta communities categorised as ST by state administratively) (%)
Betul	10.1%	9.34%	42.3%	38.46%
Bhopal	15.1%	15.07%	2.9%	5.02%
Jabalpur	14.1%	47.51%	15.2%	3.31%

Figure 14: Comparison of SC and ST population in districts with number of persons implicated in FIRs who belong to the SC and ST communities (The SC and ST populations in both datasets include the people belonging to Vimukta communities which have been categorised as SC or ST communities by the state.)

FIRs dataset of 3 districts

Source: MP Census 2011 and MP Police Citizen Portal

b. Arrests

The overrepresentation of oppressed communities in the criminal justice system is also evident in the arrest records. We analysed the last names of 48,898 individuals to determine their caste location. (62)

56.35% of the individuals arrested belong to SC, ST, OBC and Vimukta communities at 9.87%, 21.53%, 15.64%, 6.86% respectively and the remaining 2.45% fell into the category 'Possibly Marginalised'. This category includes those individuals whose last names are claimed by at least two groups of oppressed castes and not claimed by the oppressor castes.

Of the remaining 43.65% individuals, only 4.06% were from the General Category, and 14.12% individuals used last names that were used by both the oppressor and oppressed castes. To err on the side of *undercounting* marginalised individuals, the latter group were counted as 'Maybe General'. Arrests under 'Maybe General' and 'General' may be counted together, but with the knowledge that it may result in an undercount of arrests against members of the marginalised communities.

Our methodology, while rigorous, is imperfect. There were several last names that we were unable to map within the caste hierarchy despite our fairly extensive search. These names, or rather individuals, were marked as 'Unclassified'. About 12% of the total individuals arrested fell in this category. In addition to these individuals, we were also unable to identify the caste location of 13.45% individuals because the arrest records did not provide their last name. The entries that did not have last names were excluded from the scope of our analyses and are categorised as 'Zero'. It is worth emphasising here that while these individuals were excluded from *our* caste analysis, they are still very much a part of the caste hierarchy, falling within the oppressor and oppressed caste communities.

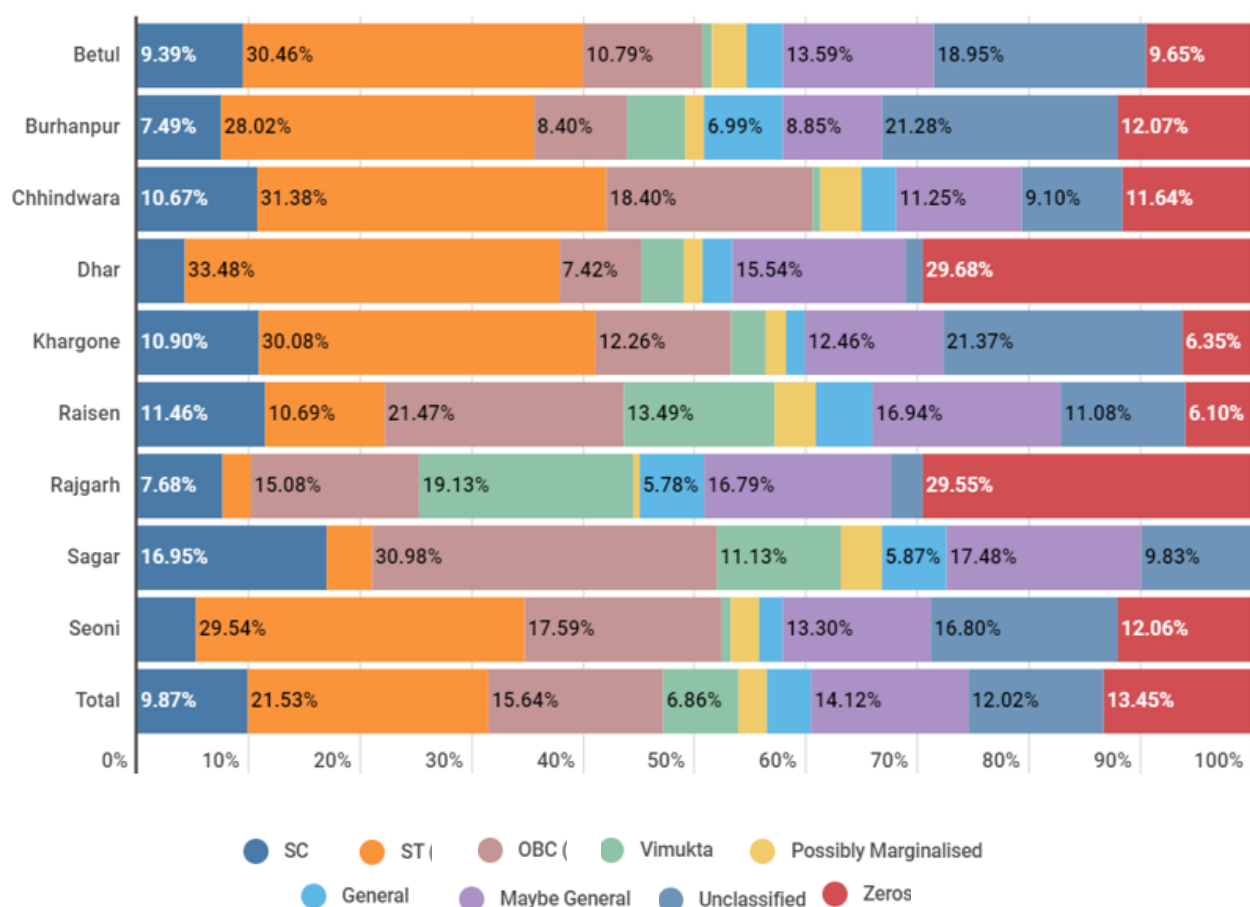
In addition to treating the Vimukta community as a separate category in *our* caste analysis of the arrest data, we also simultaneously analysed the data by the means of state categories -- Vimuktas are subsumed within the other administrative categories. We adopted this approach to track both their presence and their invisibilisation in the criminal justice system as a distinct community.

Our analysis also compared the proportion of arrested individuals of SC and ST Categories to their population in the districts.

On an average, almost every third person arrested in any of the police stations in Betul, Chhindwara, Dhar, Khargone and Seoni was a member of the ST community. The high percentages of ST arrests in those districts somewhat corresponds with the overall ST population of that district when compared to the census figures. These five districts have a higher proportion of ST population than others because parts of these districts are classified as Fifth Schedule areas. (63)

Dhar with 33.94% had the highest numbers for ST arrests among these districts and over 66% of all excise arrests in its Gandhwani, Dahi, Mandav and Tanda police stations were against members of the ST community. Gandhwani police station had the highest percentage at 82.52%, meaning therefore that, for every five excise arrests at that police station over four were against members of ST community. The number of individuals arrested from the ST community in Gandhwani police station was highest among all police stations across the nine districts analysed in the arrest records dataset. Similarly, Bharkachh police station in Raisen had the overall highest percentage (39.25%) for excise arrests against members of the SC community in any given police station. However, the overrepresentation of the SC community was the highest in Rajgarh with nearly 5% overrepresentation.

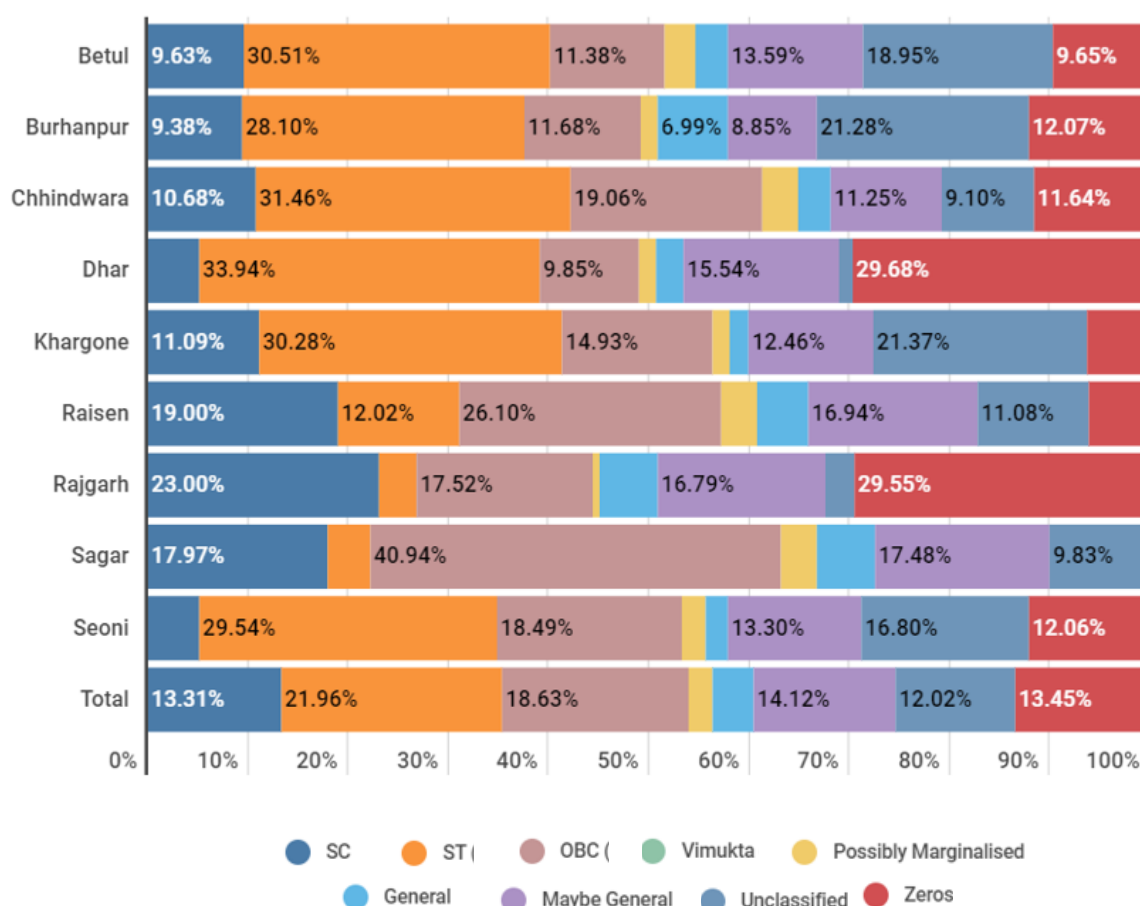
District	SC (Arrest)	ST (Arrest)	OBC (Arrest)	Vimukta (Arrest)	Possibly Marginali sed (Arrest)	Maybe General (Arrest)	General (Arrest)	Unclass ified (Arrest)	Zeros (Arrest)
Betul	9.39%	30.46%	10.79%	0.88%	3.05%	13.59%	3.25%	18.95%	9.65%
Burhanpur	7.49%	28.02%	8.40%	5.24%	1.66%	8.85%	6.99%	21.28%	12.07%
Chhindwara	10.67%	31.38%	18.40%	0.75%	3.71%	11.25%	3.10%	9.10%	11.64%
Dhar	4.26%	33.48%	7.42%	3.79%	1.75%	15.54%	2.64%	1.43%	29.68%
Khargone	10.90%	30.08%	12.26%	3.06%	1.74%	12.46%	1.78%	21.37%	6.35%
Raisen	11.46%	10.69%	21.47%	13.49%	3.65%	16.94%	5.13%	11.08%	6.10%
Rajgarh	7.68%	2.47%	15.08%	19.13%	0.70%	16.79%	5.78%	2.82%	29.55%
Sagar	16.95%	4.01%	30.98%	11.13%	3.59%	17.48%	5.87%	9.83%	0.17%
Seoni	5.19%	29.54%	17.59%	0.90%	2.48%	13.30%	2.14%	16.80%	12.06%
Total	9.87%	21.53%	15.64%	6.86%	2.45%	14.12%	4.06%	12.02%	13.45%



Figures 15.A & 15.B: Caste locations of individuals arrested under the Excise Act
Arrest records for 9 districts

Source: MP Police Arrested Person Database

District	SC (Arrest)	ST (Arrest)	OBC (Arrest)	Possibly Marginalis ed (Arrest)	Maybe General (Arrest)	General (Arrest)	Unclassi fied (Arrest)	Zeros (Arrest)
Betul	9.63%	30.51%	11.38%	3.05%	13.59%	3.25%	18.95%	9.65%
Burhanpur	9.38%	28.10%	11.68%	1.66%	8.85%	6.99%	21.28%	12.07%
Chhindwara	10.68%	31.46%	19.06%	3.71%	11.25%	3.10%	9.10%	11.64%
Dhar	5.17%	33.94%	9.85%	1.75%	15.54%	2.64%	1.43%	29.68%
Khargone	11.09%	30.28%	14.93%	1.74%	12.46%	1.78%	21.37%	6.35%
Raisen	19.00%	12.02%	26.10%	3.65%	16.94%	5.13%	11.08%	6.10%
Rajgarh	23.00%	3.84%	17.52%	0.70%	16.79%	5.78%	2.82%	29.55%
Sagar	17.97%	4.14%	40.94%	3.59%	17.48%	5.87%	9.83%	0.17%
Seoni	5.19%	29.54%	18.49%	2.48%	13.30%	2.14%	16.80%	12.06%
Total	13.31%	21.96%	18.63%	2.45%	14.12%	4.06%	12.02%	13.45%



Figures 16.A & 16.B: Caste locations of individuals arrested under the Excise Act [when Vimukta community is subsumed in state administrative categories]

Arrest records for 9 districts

Source: MP Police Arrested Person Database

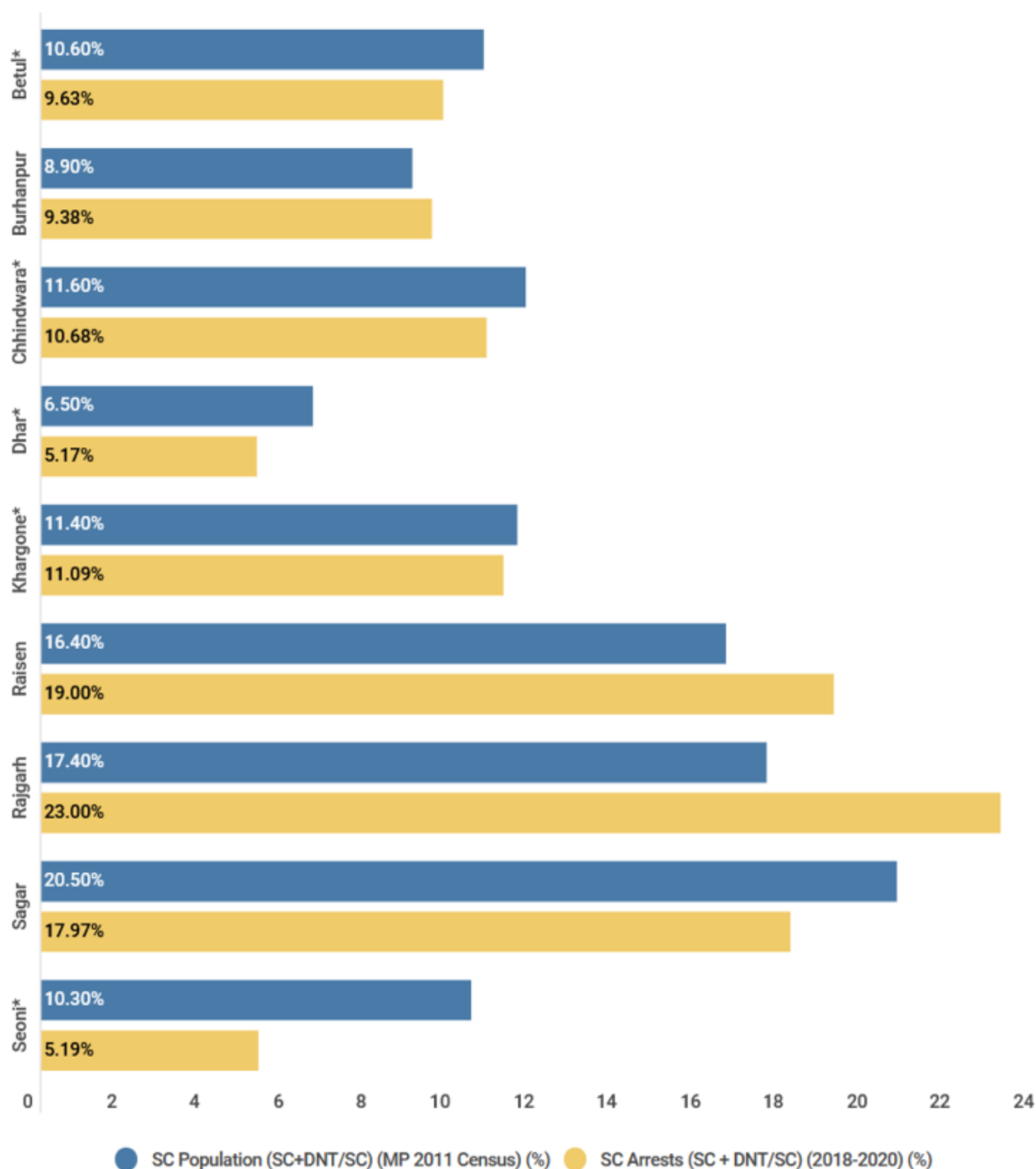
District	SC Population including Vimukta communities categorised as SC by state (MP 2011 Census) (%)	Arrested SC Persons (SC + Vimukta communities categorised as SC by state administratively) (FIRs) (%)	ST Population including Vimukta communities categorised as SC by state (MP 2011 Census) (%)	Arrested ST Persons (ST + Vimukta communities categorised as ST by state administratively) (%)
Betul*	10.60%	9.63%	39.40%	30.51%
Burhanpur	8.90%	9.38%	26.50%	28.10%
Chhindwara*	11.60%	10.68%	34.70%	31.46%
Dhar*	6.50%	5.17%	54.50%	33.94%
Khargone*	11.40%	11.09%	35.50%	30.28%
Raisen	16.40%	19.00%	15.70%	12.02%
Rajgarh	17.40%	23.00%	3.80%	3.84%
Sagar	20.50%	17.97%	9.70%	4.14%
Seoni*	10.30%	5.19%	36.80%	29.54%

* Districts with Schedule Five areas.

Figure 17: Comparison of district-wise SC and ST population with the number of arrested persons belonging to the SC and ST communities. (The SC and ST populations in both sets include the Vimukta communities that are classified as SC or ST by the state.)

Arrest records for 9 districts

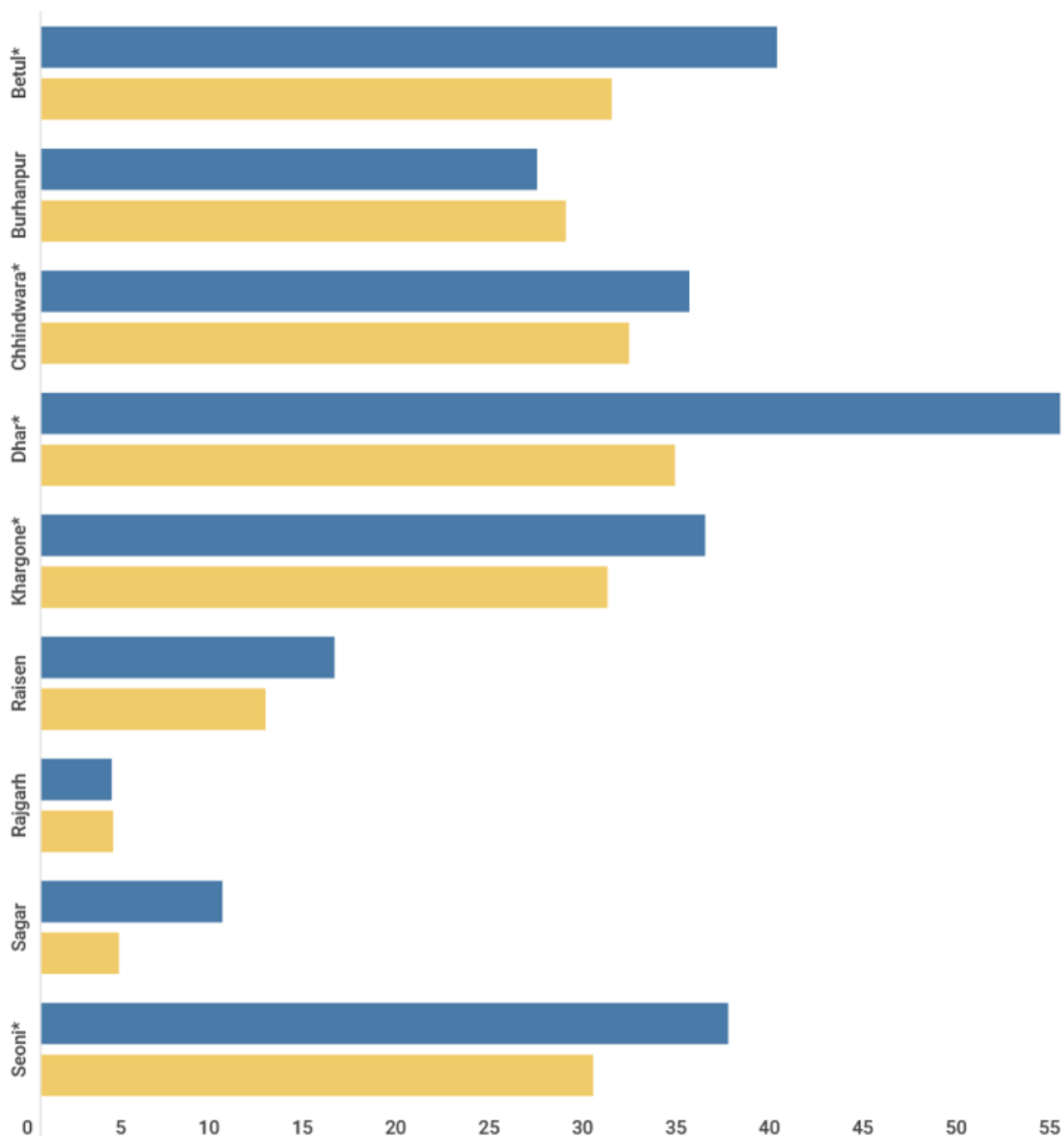
Source: MP Census 2011 and MP Police Arrested Person Database



* Districts with Schedule Five areas.

Figure 18.A: Comparison of district-wise SC population with the number of arrested persons belonging to the SC community. (The SC population in both sets include the Vimukta communities that are classified as SC by the state.)

Source: MP Census 2011 and MP Police Arrested Person Database



* Districts with Schedule Five areas.

Figure 18.B: Comparison of district-wise ST population with the number of arrested persons belonging to the ST community. (The ST population in both sets include the Vimukta communities that are classified as ST by the state.)

Source: MP Census 2011 and MP Police Arrested Person Database

iii. Criminal Women—Analysis from the FIRs

According to the NCRB's Crimes in India 2019 report, women account for 6% of all persons accused in chargesheets. This number is 5% for MP. In our data set of 540 FIRs, which implicated 562 individuals, we identified 514 individuals as men and 46 (8%) as women from their first and last names provided in the FIR as well as in police descriptions in the FIRs. The gender of two individuals was difficult to ascertain due to textual ambiguities. At least some of the accused individuals are likely to belong to trans, non-binary and other non-normative genders. However, this is difficult to discern from the data, wherein there is no self-declaration of gender of the accused persons and only the descriptive pronouns used by the police in the FIRs are available. Our exercise of a gender-centred analyses is therefore entirely cis-gendered, limited by a normative gendering of accused persons by the police, due to the absence of additional information. We were unable to conduct a gender-based analysis of arrest records given the large number of arrest records.

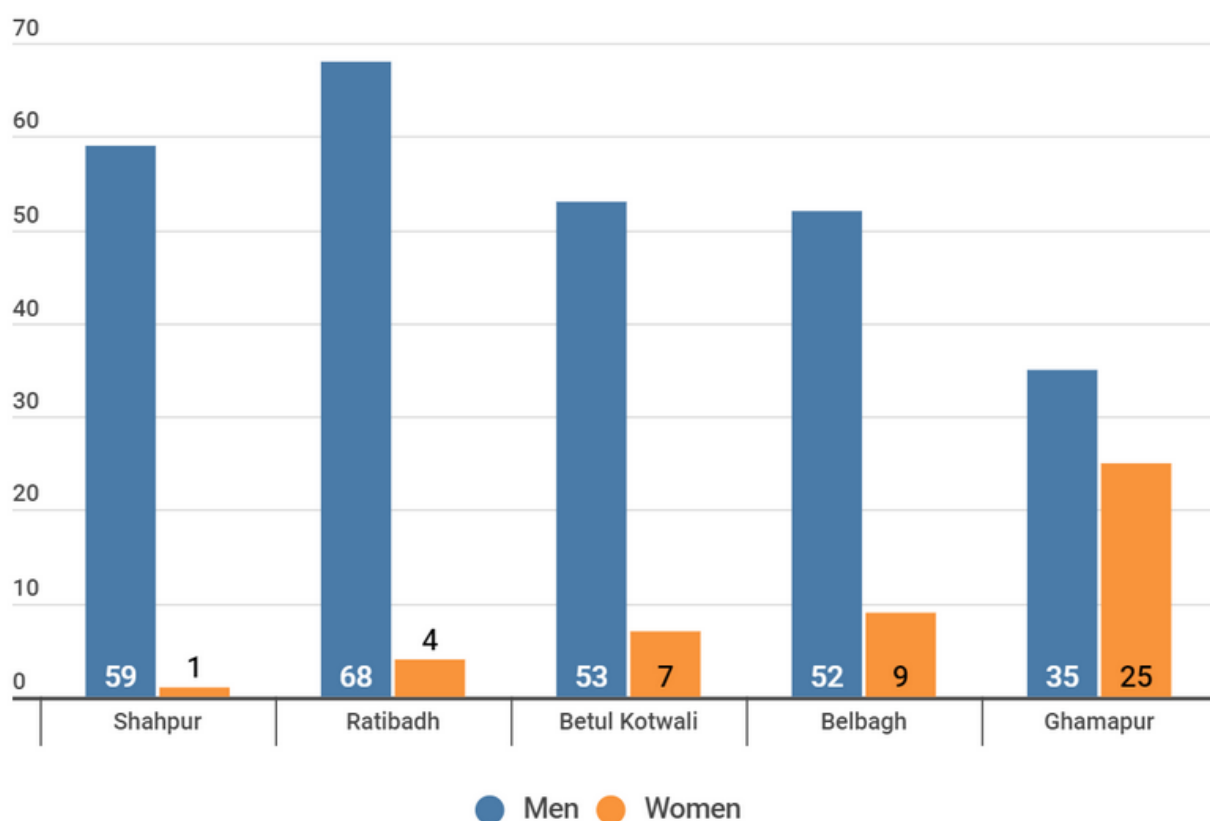


Figure 19: Gender identities of individuals implicated in FIRs across police stations
FIRs dataset of 3 districts

Source: MP Police Citizen Portal

Twenty-five of the 46 women implicated in the FIRs were accused by just one of the nine police stations we studied— Ghamapur in Jabalpur. The remaining 21 accused women were incriminated by four other police stations. The representation of women among the accused in Betul Kotwali PS, Betul and Belbagh PS, Jabalpur was observed to be higher than the state average for all crimes. However, this is not the whole story in analysing the intersection of gender and caste in the constructions of criminality.

iv. Intersection of Caste and Gender in Narratives of Criminality

Our analysis of the targeting of various groups is rooted within the framework of intersectionality,⁶⁴ which was first theorised by Kimberle Crenshaw. Intersectionality emerged in the context of African American communities, and describes why the discrimination experienced by Black women is different from that experienced by White women and Black men. In the Indian context, the same argument of ‘difference’ and ‘sameness’ has been made by Dalit women while articulating their position within the feminist movement. (65)



Figure 20: Gender identities of individuals implicated in FIRs across police stations
FIRs dataset of 3 districts

Source: MP Police Citizens Portal

They have argued that their experience of marginalisation is unique by virtue of their caste and gender location(s), and thus different from those of dominant caste women. To capture this unique experience of marginalisation and targeting, we conducted a gendered analysis of the various caste and ethnic groups policed under excise laws in our FIR dataset.

a. First Information Reports

Of the 46 women accused in the FIRs, the caste location of only 41 women could be ascertained. Of these 41 women, 32 (80%) belonged to the Vimukta communities (24 Kuchbandhiya and eight Kanjar), seven to Adivasi communities (all Gond) and one each from an OBC and a dominant caste community. No FIRs were registered against women from the SC category. We also noted that some women were accused in multiple FIRs. Four Kuchbandhiya women and one Kanjar woman from Ghamapur and Belbagh respectively were implicated in more than one FIR within our small, limited sample. Jabalpur, which recorded the highest number of FIRs against women, systematically criminalised women from Vimukta Kuchbandhiya and Kanjar communities.

Communities	Number of women accused	% in proportion to all women accused
Kuchbandhiya (Vimukta)	24	58.54
Kanjar (Vimukta)	8	19.51
Total Vimukta	32	78.05
Gond (Adivasi)	7	17.07
OBC	1	2.44
Total from marginalised communities	40	97.56
Dominant caste	1	2.44
Total	41	100

Figure 21.A: Caste location of women implicated in FIRs under the Excise Act
FIRs dataset of 3 districts

Source: MP Police Citizens Portal

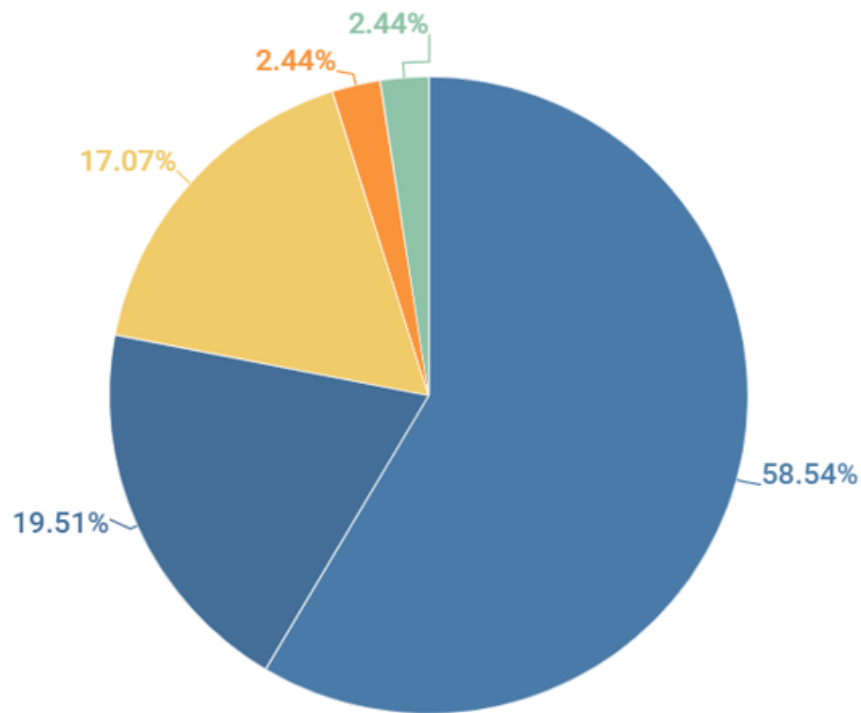


Figure 21.B: Caste location of women implicated in FIRs under the Excise Act
FIRs dataset of 3 districts

Source: MP Police Citizens Portal

Women from Vimukta communities are particularly susceptible to such persecution owing to the historical stigma of criminality associated with these communities, in contrast to Dalit or Adivasi women. Needless to say, persecution is a stark reality even for Dalit and Adivasi women in a criminal justice system that is rooted in Brahminical patriarchy. OBC women are also susceptible to such violence. However, the criminalisation of Vimukta women is particularly noteworthy because their historical and relentless persecution is facilitated through laws such as the Excise Act. The narrative of ‘criminal by birth’ is perpetuated by a colonial and casteist legal and policing regime. It invisibilises the gendered state-sanctioned violence against Vimukta women, whose so-called criminal antecedents are then used to obfuscate the Brahminical, patriarchal violence of policing.

Unsurprisingly, only one accused woman belonged to the General Category, which is composed of the dominant oppressor castes. Our disaggregated data analysis helps dispel the notion of homogeneity that accompanies the casteless framing of gender categories, particularly that of ‘women’.

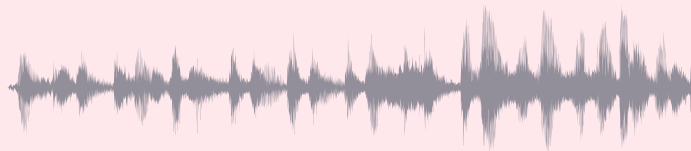
b. Arrest records

Given the large number of Vimukta women implicated in the FIRs from Jabalpur's Ghamapur, we decided to conduct a gender-caste analysis of arrest records from Ghamapur between 2018 and 2020. We found that of 1,094 excise-related arrests, 624 (57%) involved Kuchbandhiya individuals. Over two of every three arrested members of the Kuchbandhiya community (71%) were women. Furthermore, 441 of 509 women (87%) arrested in Ghamapur for excise-related offences were from the Kuchbandhiya community. A large number of the remaining women were from Dalit, Adivasi and Muslim communities.

In the Indian context, criminality has often been constructed around gender and stereotypes associated with it, mainly to the detriment of men from Dalit, Adivasi, Vimukta, and Muslim communities. For instance, Muslim men are routinely branded as anti-national and detained en masse following incidents of terror, or even lawful protests. (66) In recent years, the narrative around 'love *jihad*' has further served to render Muslim men vulnerable to police persecution. (67)

Vimukta men and boys have long been objects of policing, criminalised for offences ranging from minor thefts to dacoity. (68) However, very little study has been done about the ascription of criminality to women from these communities. At first glance, it would appear that only men are subjected to the excesses of discretionary policing. However, with specific legal regimes like excise laws and specific caste locations such as that of the Vimukta communities, it is evident from our findings that the system of policing is invested and involved in constructing women's criminality, at least in specific districts. The interface of caste and gender deserves further scholarly assessment based on wider theoretical and empirical material, which is beyond the scope of our present discussion.

Ghamapur Police Station and the Kuchbandhiya Community



The policing of the Kuchbandhiya mohalla by the Ghamapur police station is one of the most glaring examples of how intrusive forms of surveillance conceptualised under the CTA, supposedly abandoned since 1952, continue to operate and fester.

The Vimukta Kuchbandhiya community has experienced police persecution and surveillance for more than 150 years. The formerly forest-dwelling community used to rely on forest resources to make *kooch*, the fabric from which they get their name. Now, several members of the community live in Jabalpur, running shops, driving autorickshaws and loading mini-trucks. Women sell *chuhara* (cashews, pistachios and raisins) in the markets and on trains. Many families also manufacture small quantities of alcohol at home.

The Ghamapur police station sits barely half a kilometre from the Kuchbandhiya *mohalla*, which also lies adjacent to a residential colony housing police personnel. The members of the community are easy and familiar targets for the police and this is reflected in the FIRs and arrest records from the police station.

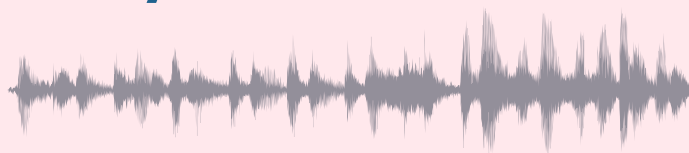
There is also a fair amount of obfuscation in registering the FIRs. The police don't mention seizure witnesses in any of the FIRs and use boilerplate text.

In our sample of 60 FIRs from Ghamapur, 33 Kuchbandhiya individuals were accused of either intending to sell or merely possessing *desi mahua* alcohol, all within a 2–5 litre range. Neither were the accused found to be actually selling alcohol, nor were there any reported buyers. This is unsurprising; the former brings with it higher evidentiary requirements.

We also noted that certain names featured multiple times in the arrest records. Three Kuchbandhiya women were arrested 28, 26 and 23 times respectively between 2018 and 2020; all three were between 30 and 40 years of age. Many other women and men had also been arrested more than 10 times. While they were often accused of minor bailable offences, one accusation of a more serious offence was sufficient to deny them bail due to their 'criminal antecedents'.

Casting a broad net of criminality against the Vimuktas is easier and economically beneficial in comparison to policing or taking concerted action towards ending the community's involvement in the liquor trade. Even if the latter goal is pursued, the outcome will be iniquitous. The community has developed expertise in manufacturing alcohol and some members of the community wonder why they cannot be given licences to produce liquor legally. Instead, persistent charging of community members with minor offences allows the police to gain extensive leverage over the community, perpetuating the myth of Vimukta criminality. Criminal records are a cudgel in the hands of the police, used liberally to subdue and exploit members of the community indefinitely.

Kuchbandhiya Women and Bail Orders



To examine whether the persecution of Kuchbandhiya women continues through the higher rungs of the criminal justice system, we studied bail orders from the MP High Court for the same duration, that is, 1 January 2018 to 31 December 2020. A total of 12 bail orders were passed against Kuchbandhiya women across MP for offences under the Excise Act.

Ten out of the 12 orders were for offences under Section 34. Section 34 does not criminalise a grave offence by nature; even those offences pertaining to commercial quantities of liquor (>50 litre) are proscribed with a maximum imprisonment of three years.

We noted that in two cases the applications had been rejected because the Court noted that the accused seemed to be a “habitual offender” or “habitual of committing offences related to the Excise Act”. **In one case** for anticipatory bail, the state merely claimed that 50 cases were filed against the applicant and the judge failed to examine these cases before branding the woman as a “habitual offender” and refusing her bail. **In the other case**, the Court noted that the woman was involved in 29 cases, including those both decided and pending, and was therefore habitual of committing offences under the Excise Act. **In a third case**, the ‘habitual offender’ status led to harsher bail conditions despite the woman already having spent 193 days in custody.

The creation of a ‘habitual offender’ record is yet another instance of the procedural violence against marginalised communities.

Two orders were passed in the case of one Kuchbandhiya woman accused under Section 49-A. Her first bail application was rejected due to the “grave nature of the allegation” but after having spent three more months in custody during which the charge sheet was filed, her second application was finally allowed. This practice of not releasing accused until after several months in prison is also apparent, especially in the cases against members of the marginalised communities.

Take now the example of Jashoda Bai, an elder woman from the Kuchbandhiya community residing in another heavily policed area, who we interviewed. Jashoda Bai told us (and the arrest records confirm) that she has been booked over half a dozen times for offences under Section 34(1) of the Excise Act between 2018 and 2020.

Not all cases were rooted in true allegations; however, the police tell the ‘accused’ to plead guilty and pay the fine, which can range from any amount between ₹500 and ₹1200, instead of fighting the charges, or else they would be sent to jail. She claims the harassment is more common than the records indicate. **She also states that the police visit her neighbourhood nearly everyday and threaten to arrest someone unless they pay a bribe.**

Jashoda Bai states that she has had to pay a total of ₹15,000 on three occasions over just two months.

The police have wide discretion and leverage. If they decide to charge an individual under Section 34(2) for possession or sale of a bulk quantity of liquor (over 50 litres), one might spend months in prison. **Jashoda Bai recalls when she was arrested under Section 34(2); she had spent over seven months in prison before being granted bail by the High Court of MP. She was eventually acquitted by the trial court.**

Her second incarceration was as an undertrial. The police came to her house and sought a bribe for not implicating her under the Excise Act. She states that she and her family, which includes her terminally ill sister, were brutally assaulted by the police. She was then booked for non-bailable offences under the IPC and spent two months in prison before being granted bail, again only by the High Court. The magistrate refused to check on her injuries and as far as she knows no arrest guidelines were followed. On this occasion, she spent ₹30,000 as lawyers' fees and other court expenses, by borrowing from other members of the community. Her household earns around ₹50,000 every year.

Consequently, an arrest under one of the more stringent provisions of the Excise Act besides the bribes keeps her trapped in a cycle of indebtedness.

v. Notes on Other Demographic Identifiers—Religion and Age (FIR Analysis)

The religious identities of the individuals implicated in FIRs was determined by making reasonable assumptions from their first and last names; certain FIRs mentioned the religion of the accused explicitly. A majority of the accused presumably belong to the Hindu religion, with Multai and Shahpur police stations in Betul and Bhedaghat and Ghamapur police stations in Jabalpur only having presumably Hindu accused persons.

The only other religious demographic group that featured explicitly in the data set was Muslims, comprising 5% of the individuals accused in the FIRs. Given that Muslims comprise 7% of the MP's population according to the 2011 census, they do not seem to be over-represented in the data set. Aishbagh police station in Bhopal was an anomaly in this regard with 30% of the accused being Muslim, nearly six times the overall percentage share of Muslim accused persons in our dataset.

No minors were found as accused in the FIR dataset. The average age of the accused in the FIRs was between 31 and 35 years. About 41% of the individuals accused in FIRs belonged to the 26–35 years age group. Around 8% of the individuals accused were aged between 46–50 years and 6% were aged between 51–60 years. Four accused individuals belonged to the 61–70 years age group.

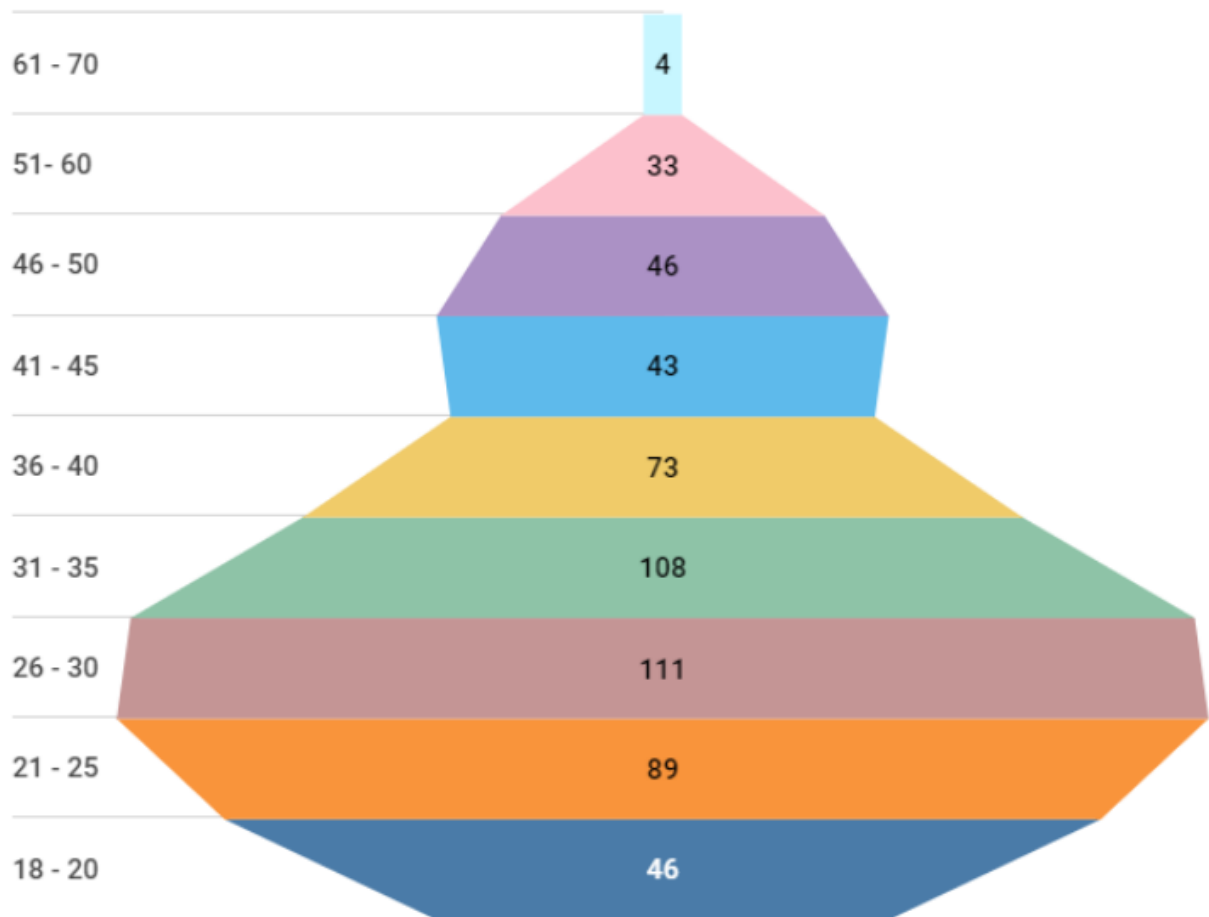


Figure 22: Age of the individuals implicated for excise related offences in FIRs
FIRs dataset of 3 districts

Source: MP Police Citizens Portal

Chapter 6:

THE NARRATIVES OF CRIMINALITY

*Piecing the Logics of Excise
policing from an analysis of FIRs*



This chapter studies the FIRs to analyse how the police frames criminality through vague and unsubstantiated claims under the broadly worded provisions of Sections 34 and 36 of the Madhya Pradesh (MP) Excise Act. This chapter also demonstrates how the network of mukhbirs is critical to excise policing and the subsequent constructions of criminality. It highlights the endemic use of recurring witnesses for seizure procedures. Together, these three findings point to dangerous and extensive abuse of police discretion.

i. Narratives of Criminality under Section 34 of the MP Excise Act

The bulk of the FIRs registered under the Excise Act can broadly be classified into two categories: offences booked under Section 34 and those purportedly booked under Section 36-B.

a. Callousness in detailing specific subsection

Section 34 of the Excise Act prohibits the manufacture, possession and sale of any alcohol without a prior licence, permit or pass. Section 34(1) applies when the alleged quantity of the alcohol is 50 litre or below while Section 34(2) is applicable when the alleged quantity of the alcohol exceeds 50 litre.

99 of the 540 FIRs (18.3%) in our data set merely accuse the individuals named therein of violating Section 34. However, they do not detail the specific clause (and the corresponding offence) that the individual implicated thereunder is accused of violating. Ninety-five of these 99 FIRs are from Bhopal district with officials at Intkhedi and Ratibadh police stations being particularly callous in providing vital details of the clauses invoked during the registration of the FIRs. Different clauses have different punishments prescribed for violations. It is therefore necessary that the police state the specific offence clearly when registering an FIR.

In the case of FIRs registered under Section 34 of the Excise Act, it is still possible and fairly easy to determine the applicable provision by reading through an FIR, since the application of the provisions is dependent on the quantity of alcohol allegedly found on the individual and whether or not the accused is a past convict.

However, being ambiguous and vague when accusing individuals of violating a specific law to then initiate the criminal justice process is in itself extremely worrying because it broadens the scope of prosecution an individual is subject to and simultaneously leaves them in the dark about which specific charges they must defend themselves against and whether the offences are bailable or non-bailable. Since the quantity of alcohol in the 99 FIRs did not exceed 50 litre, we categorised them as FIRs pertaining to the violation of Section 34(1).

b. Vague or no explicit allegations

81 FIRs alleging the violation of Section 34(1) (18.3% of the FIRs related to Section 34[1]) offer no rationale by the police for accusing such individuals of violating the Excise Act. They merely state the *mukhbir's* allegation of the accused individual selling or intending to sell alcohol. Furthermore, 25 FIRs accused individuals of violating Section 34(1) for lacking a licence. However, these FIRs are vague or unclear about which licence (sale, permission, manufacture, transport) was sought from the accused.

c. Criminalising 'sale'

62 FIRs accused individuals of violating Section 34(1) by selling alcohol without a licence. These FIRs comprise over 14% of the FIRs alleging the violation of Section 34(1). The text of a majority of these FIRs begins with stating that the *mukhbir* passed a tip-off to the police about the implicated individual. The *mukhbir's* allegation is that the person was either selling alcohol or, more commonly, that the person was in possession of alcohol with the *intent* of selling it. The police then follow the tip-off to find the accused in the location described by the *mukhbir* and question the individual for a licence to sell alcohol or accuse the individual of having an intent to sell the alcohol and thereby violating Section 34(1).

It is important to note two key issues here: **first**, for the police to determine that the alleged individual must be questioned about a licence for sale, they must have witnessed some facts which point to the act of actual sale, such as presence of a customer or the exchange of money. **Second**, how may the police determine that an individual in possession of alcohol is intending to sell it? Here, it is the shadowy figure of the *mukhbir* or the police's unsubstantiated suspicions, and not any facts, that inform the police's allegations. Only two of the 62 FIRs state that the individuals implicated admitted to having an *intent* to sell the alcohol they were found to be in possession of. These two FIRs must also be examined critically: admissions, after all, may be coerced.

It is also important to ask why buyers and manufacturers are excluded from policing priorities entirely, if the purpose is to regulate the sale of alcohol even for small quantities. The police appear to never criminalise consumers or even investigate who they are (except in the cases of public drinking, detailed below).

d. Criminalising ‘unlawful’ possession

Out of the 540 FIRs, 442 (81.85%) accused individuals of violating Section 34(1). In nearly half (48.9%) of the 442 FIRs, the police registered FIRs against individuals for a lack of licence for possession. Possession is criminalised under the Excise Act only when the accused knows the liquor to have been unlawfully manufactured or collected without payment of the prescribed duty. Thus criminality derives not from possession, but from the knowledge that the liquor was unlawfully manufactured. Furthermore, Section 34 does not criminalise mere possession but possession in contravention of rules, notification etc. It is thus expected that the FIR mention the rule that has been flouted but we find that no FIR mentions such a rule or notification. It is therefore not explicitly clear why the possession of alcohol without a licence ought to be policed.

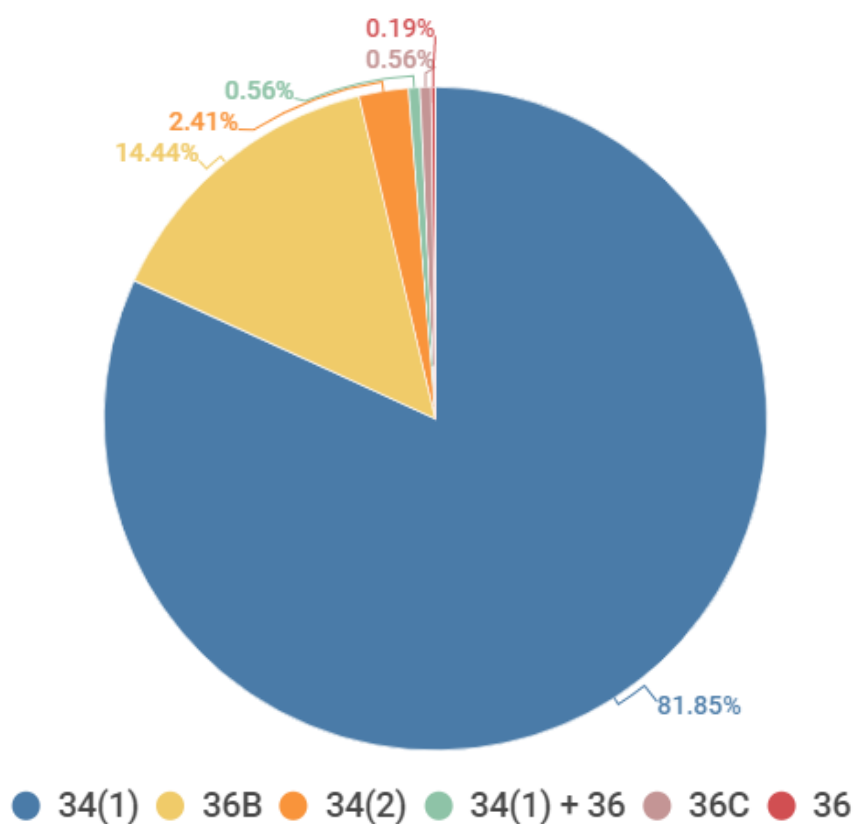


Figure 23: Frequently used MP Excise Act provisions for registering FIRs
FIRs dataset of 3 districts

Source: MP Police Citizens Portal

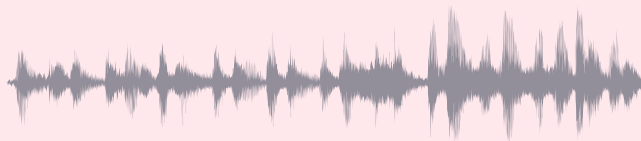
If the state's purpose for regulating possession is to ensure that it can indirectly regulate and monitor the manufacture and sale of alcohol, even in the absence of evidence to prove actual sale or manufacture of alcohol without licence, we must first examine whether such small quantities of alcohol ought to warrant state intervention at all.

Additionally, we must remember that discretion is the *sine qua non* of policing in India. While discretion is characterised as an asset that allows officers to accommodate various circumstances, it is often wielded according to one's own understanding of social norms and moral responsibilities and is therefore inherently arbitrary. The police determine whether laws have been violated, especially when they are themselves the complainants in the FIRs. Thus, such FIRs are only a testament to the number of times the police have *determined* the law to have been violated; they do not represent the *actual* number of times that the law has been violated.

Of course when it relates to excise offences, particularly for possession of small quantities of alcohol, it is unreasonable to expect the police to know all the times that the law was violated. However, it is also reasonable to assume that every instance of possession of alcohol is not determined by the police to be questionable, inviting further scrutiny. After all, how often are members of upper caste and class communities who are consumers and possessors of alcohol questioned by the police for a licence, permit or pass to possess alcohol? It is therefore pertinent to remember that certain types of individuals who reside in specific communities or occupy specific public spaces, and carry country liquor are subject to disproportionately high scrutiny by the police.

The remaining FIRs pertaining to Section 34(1) alleged that the individuals implicated lacked a licence for sale and a licence for either possession or transport. The FIRs that alleged the violation of Section 34(2) comprise only 2.4% of the data set of 540 FIRs.

False Cases, Demands for Bribe and Arbitrary Policing



Kuldeep (name changed) was booked in 2020 for an excise offence. He was detained from outside a shop in Berasiya town. At the Police Station, he was asked which community he belonged to. When he said Kanjar, the Assistant Sub-Inspector allegedly said "*Madarchod Kanjar hai, koi bhi case laga do* [**Expletive**, He's Kanjar, book him for any case.]" Kuldeep was illegally detained at the station for three days. The police demanded ₹1,00,000 from his family in exchange for his release. When they were unable to pay, the police made him participate in an enacted alcohol seizure with two stock witnesses in attendance. He states that if he had not cooperated, the police might have 'encountered' him.

The police bribed the doctors for a favourable medical report. Kuldeep was also never produced before the Magistrate. The police apparently seem to have spoken to the absent Magistrate on the phone, who remanded him to judicial custody without seeing him. Kuldeep was granted bail by the High Court after a month. He tells us that he has been too afraid to venture outside his village since his case and he refuses to go even for his court hearings.

Kuldeep's brother, suffering from a lung condition, passed away while Kuldeep was in prison since nobody could tend to his illness. Kuldeep was denied bail even to carry out the funeral. Kuldeep is now the sole breadwinner for an extended family of 12. In addition to other expenses, his family must pay back ₹35,000 on a loan of ₹25,000 taken from a moneylender, to pay his lawyer. The loan may compound to ₹1,00,000 if it is unpaid by 2022. Kuldeep states that his income is from his crop and buffaloes and can vary between zero to ₹2,50,000.

Kuldeep tells us that the police are the biggest goons and pick 'whoever they want and they kill whoever they want'. The police collect money from alcohol shop owners and book persons who are selling alcohol worth ₹100 - 200 everyday for subsistence. He ruminates that if the Kanjars were Thakurs or Rajputs, all would be different.

ii. Incorrect Invocation of Section 36-B of the MP Excise Act

Section 36-B, as noted earlier, requires that the accused be “found drunk and drinking *in a common house*.” It must be noted, right at the start then, that Section 36-B has been invoked incorrectly in all the FIRs studied, with the police treating Section 36-B as a provision that penalises someone “found drunk or drinking” *simpliciter*. This appears to be a largely urban phenomenon, with the majority of such FIRs (90%) emerging from Bhopal district. Off the cuff, 68% of the FIRs from Aishbagh, Bhopal have no legal standing whatsoever.

Yet another absurdity, observed in 5% of the Section 36-B FIRs, involves the police seeking a “licence to consume” alcohol from the individuals subsequently accused, though the mainstream trend involves the police apprehending an allegedly inebriated individual from a public place and taking them in for that fact alone. Therefore, the police seem to operate within an alternative reality wherein Section 36-B is a genus within the broader species of laws penalising versions of public nuisance.

A large number of the Section 36-B cases originate from Ratibad, a police station located in peri-urban Bhopal, which was hitherto a largely rural area. The FIRs from this police station follow a standard template, according to which the accused is found in a public place in possession of a pouch or two of water, a disposable plastic glass, and a half-eaten packet of *namkeen* (snacks). The proliferation of stock witnesses, discussed in further detail below, is a hallmark feature of such FIRs. The wrongful invocation of the provision, and the formulaic narrative of the FIRs are a blatant example of how the Excise Act has morphed into a convenient tool of policing marginalised communities.

Indeed, the ‘public drinking’ set of cases exhibit, in some ways, the worst of the police’s malignant tendencies, as another case from Bhopal demonstrates, this time from Aishbagh police station, having jurisdiction over a densely populated neighbourhood in the middle of the town. A tip from a *mukhbir* leads the police to the accused, a 26-year-old SC man, who is getting drunk in a ‘public’ place, to the point where he can barely walk, and has allegedly sustained injuries from falling over. The alcohol in question is promptly seized, and the accused is duly arrested, taken for medical examination and informed that he may obtain bail if he can successfully produce someone to furnish surety. Since the accused is unable to do so, he is brought back to the police station and held in custody.

Again, the police's account follows an expertly-honed template which fails to withstand close critical scrutiny: for instance, the 'public' place of the commission of the alleged offence is also the accused's address, and out of the two witnesses to the arrest and seizure who are stated to be present on the spot, one is, again, a stock witness and another a police officer. The FIR is also rife with examples of cavalier police abuse: the accused's mobile phone number is blithely stated in a publicly available document, and an arrest is made as a matter of course, despite the seized alcohol measuring about half a quarter, valued at no more than ₹50. The latter fact also raises some more disconcerting red flags: are we to believe that the accused got so drunk on half a quarter of liquor that he could not walk straight and kept stumbling after the police? Why is the police, otherwise perfunctory, so meticulous in recording how the accused person sustained injuries? As with most FIRs, the reader is left with a sense that the narrative of the police speaks more in its elisions and omissions than through the text.

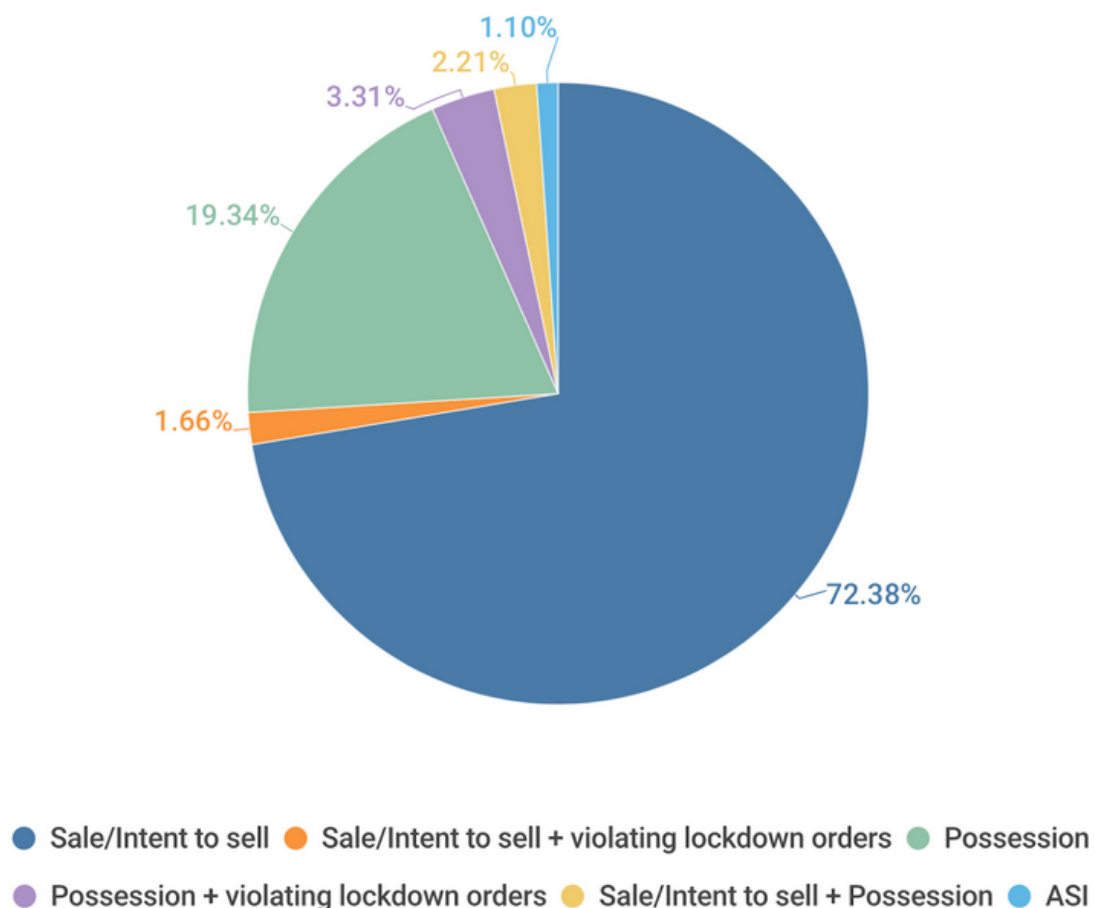


Figure 24: Nature of police allegations in FIRs concerning *Mahua*
FIRs dataset of 3 districts

Source: MP Police Citizens Portal

iii. The Prominence of Mukhbirs

Another trend observed in the FIRs is the police's extensive reliance on *mukhbirs* as the source of information about the alleged commission of a crime. *Mukhbirs* are commonly recruited by the police to surveil certain communities and networks that they deem to be more prone to committing criminal acts. Furthermore, since the police are generally not required to name or produce a *mukhbir*, the *mukhbir's* tip-off offers a convenient veneer for the police to scrutinise certain individuals. *Mukhbirs* are also notoriously used when the narrative in the FIR, and often the allegation, are both false, with vague references to even more vague tip-offs allowing for a degree of arbitrariness.

Out of the 540 FIRs, *mukhbirs* and the information provided by them were the genesis of the allegations in 89% FIRs. In certain police stations, the reliance on *mukhbirs* is staggering: in Shahpur police station in Betul district, *all* cases derived their origin in a *mukhbir's* information, with Betul Kotwali in Betul district and Ghamapur in Jabalpur district trailing closely with 98%. The police took cognisance of alleged offences whilst patrolling in less than 6% of the FIRs and less than 4% FIRs arose from private complaints.

iv. Stock Seizure Witnesses

The police seized the alcohol involved in the alleged offence in all 540 FIRs. Chapter VII of the Criminal Procedure Code 1973 ('CrPC') lays down the procedure to be followed by the police while searching and seizing the property for evidence related to the offence. The Code provides that the search and seizure must be conducted in the presence of two independent and respectable persons of the locality. In *State v. Ramesh*, (69) the Supreme Court of India defined an independent witness as "any person who is disinterested in the outcome of the case and for the term respectable person the court is of the view that any person whose integrity is of higher scale in the eyes of common people of the society." (70) The purpose of this procedural safeguard is to retain faith of the public in the police and to ensure a check on the exercise of powers by the police. It ensures that the search is conducted fairly and that no evidence or witnesses are planted by the police.

The recurrence of seizure witnesses runs counter to this safeguard and raises concerns about the implementation of the accused persons' procedural rights. Out of the 540 FIRs, nearly one in every two FIRs had recurring witnesses playing a critical role in the proceedings.

Most police stations had a large number of recurring witnesses—Shahpur (11 recurring witnesses), Intkhedi (10 recurring witnesses), Betul (7 recurring witnesses), Ratibadh (7 recurring witnesses), Aishbagh (5 recurring witnesses), Multai (4 recurring witnesses), and Bhedaghat (4 recurring witnesses). In these police stations, at least two witnesses remained constant between 2018 and 2020, appearing regularly for the FIRs registered throughout this period.

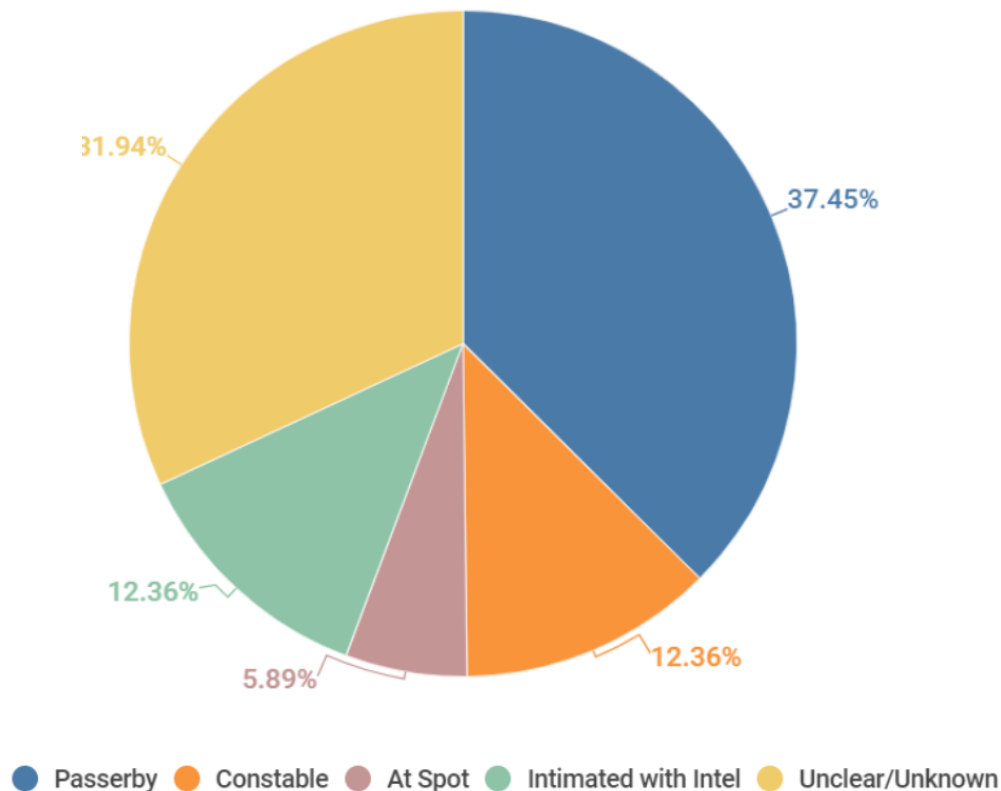


Figure 25: Police 'recruitment' of Witnesses for search and seizure FIRs dataset of 3 districts

Source: MP Police Citizens Portal

The recurring witnesses are labeled as 'passersby' in a number of FIRs, while in other instances they are said to have been brought by the police at the scene of the crime after having been intimated with intel ("*soochna se avgat kara kar*"). It is crucial to ask how these witnesses were seemingly available for every second excise case. Evidently, each police station has a list of a number of witnesses, who may be called by the police to depose falsely in favour of the prosecution.

The nexus between the police and the 'stock' witnesses seems to have originated out of the former's tendency to prefer convenience to adherence to procedure and the latter's desire to make quick cash. (71)

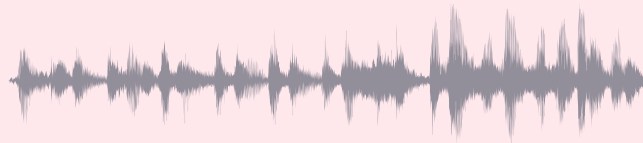
In cases wherein stock witnesses are present, it is the court's duty to brush aside their testimony and see if the remaining evidence may suffice to sustain the conviction of the accused. However, the legal process of having such witness' testimony dismissed takes up a lot of time, adding to the systemic disadvantage of the accused as a result of the police's abuse of process.

Of the 75 stock witnesses identified, 12 (i.e. 16%) were members of the police. 13.3% of the stock witnesses were from SC communities, 6.7% were from ST communities and 8% were individuals from Vimukta communities. An additional 4% of the stock witnesses were from OBC and other marginalised communities. Therefore, at least 32% of the 75 stock witnesses belong from marginalised communities. The caste locations of nearly 39% of the stock witnesses is undecipherable given the lack of details about the last name and our inability to map certain last names despite a rigorous search and at least some of them may likely belong to marginalised communities. These numbers however obscure certain police stations' strategies of relying on stock witnesses from a specific caste group. For instance 9 of the 13 stock recurring witnesses identified from Belbagh police station in Jabalpur district belong to either the Dalit or Vimukta communities. Relying on members of targeted communities as stock witnesses and *mukhbirs* may likely have the effect of creating tensions and conflicts within communities.

Ghamapur police station in Jabalpur district stands out for providing no information whatsoever regarding witnesses in 58 of its 60 FIRs. Justice in criminal proceedings can hardly be expected to be done without the active and honest participation of witnesses. Thus, the lack of information regarding witnesses is indicative of arbitrary exercises of power. This is not to say, however, that information, when provided, is always foolproof. The preceding discussion on stock witnesses, and the participation of police personnel as 'independent' witnesses in certain proceedings, seriously impugn the police's *modus operandi* in excise policing.

In 18% of the FIRs, the police also seized additional items, of which approximately 83% FIRs concerned the seizures of objects (disposable glasses, water pouches etc), 14% were seizures of vehicles and 3% seizures involved cash allegedly obtained from the illegal sale of liquor. Police corruption and inefficiency in handling seized material is rampant: seized liquor has gone mysteriously missing from the police custody, (72) been sold by police personnel in charge of it, (73) and provided convenient fodder for dipsomaniacal rodents. (74)

An 'Invisible' Witness



Devesh (name changed) is a 20-year-old youth from an OBC community. In 2019, aged 18, he was arrested by Betul Kotwali police station of Betul district for transporting 52 litre of *mahua* while returning from his coaching class.

He was stopped by the police at a public square, and kept in custody overnight at the police station. He was barred from communicating with his family and they were only informed the following morning over the phone.

Devesh states that no arrest or seizure witnesses were present. The police demanded ₹80,000 from his family for dropping the charges against him. When his family refused, an FIR was registered under Section 34(2) and the police incorrectly recorded his age as 20 years. Devesh was produced before the magistrate and remanded to judicial custody.

He spent three weeks incarcerated as his bail application was rejected by both the magistrate and the sessions court. The MP High Court granted him bail with ₹50,000 surety. When the charge sheet was filed, Devesh discovered that an employee of the excise department was named as a witness.

Chapter 7:

**CRIMINALISING
TRIVIAL
QUANTITIES OF
COUNTRY
LIQUOR**



This chapter studies FIRs to analyse the volumes and values of the alcohol involved in the alleged offence. It highlights the disproportionate policing of country liquor and finds that policing priorities are predominantly focused on criminalising individuals in possession of trivial quantities of alcohol which barely threaten the economic profits of capitalist conglomerates, given the low monetary value of the alcohol seized.

Desi/country liquor was policed disproportionately; 92% of all the FIRs criminalised desi liquor exclusively. At least 85% of the FIRs in all police stations, except Ratibadh in Bhopal, concerned desi liquor. In Ghamapur PS, Jabalpur all 60 FIRs pertained to desi liquor.

i. Volume of Alcohol Criminalised

About 73% (394 FIRs) of all the FIRs pertaining to *desi* liquor involve alcohol within the 1-10 litre range. If the number of FIRs pertaining to foreign liquor is also included, close to three-quarters (74%) of all the FIRs concern 1-10 litre of alcohol. Within the 1-10 litre range, a majority of the FIRs involved alcohol in the subranges of 3-4 litre (29.58%), followed by 2-3 litre (25.67%) and 4-5 litre (17.6%).

An analysis of the social locations of the individuals criminalised in the 394 FIRs pertaining to *desi* liquor of the 1-10 litre range reveals the following: the accused in 67 FIRs belonged to SC community, the accused in 76 FIRs belonged to ST community, the accused in 51 FIRs belonged to Vimukta communities and the accused in 73 FIRs belonged to the OBC community. 15 FIRs criminalise Possibly Marginalised individuals, 36 FIRs criminalise General category individuals and 76 FIRs criminalise individuals who are Maybe General. Therefore, at least 282 FIRs involving *desi* liquor of the 1-10 litre range criminalise marginalised community members.

The small quantities of alcohol criminalised also conflict with the public imagination around excise offences— cartons and crates brimming with alcohol. (75) A majority of the accused under these provisions are thus not criminal masterminds or liquor barons but individuals reportedly carrying small bags of alcohol. This raises a question about what (and who) the police choose to prioritise in maintaining law and order. This also brings us to another oddity that has been found in the FIRs by way of omission. Notifications issued by the MP Government allow possession of 12 Quarters i.e. 2160 ml of country spirit without a permit. In 45 (9%) of the FIRs under Section 34(1) the crux of the allegation is possession of alcohol up to 2160 ml.

Certainly possession of country spirit unlawfully procured is illegal under both Sections 34(1) and 36 of the Excise Act but none of these 45 FIRs mention exactly the reason for the police to believe that the spirit was illegal or any rule or notification would deem the possession illegal.

For 74 FIRs (13.7%), the exact volume of the alcohol could not be ascertained. The FIRs have a specific section dedicated to materials seized, where the police scrupulously record the descriptions of seized items, including alcohol. At first glance, the number of FIRs where the volume of alcohol seized has been indicated in ambiguous terms, correlates closely to the number of FIRs dealing with offences under Section 36, 36-B, and 36-C, where the police frequently provides vague descriptions of the volume of alcohol recovered from the person of the accused, such as "*bottle jismein kuchh sharab bachi thi*" ("a bottle with some alcohol left inside") and "*jo aadhi se kam bhari hui hai*" ("which is more than half-empty").

However, out of the FIRs registered under the aforesaid sections, a third of the FIRs provided somewhat useful descriptions of the volume of alcohol recovered from the accused, suggesting that it is indeed possible for the police to be more accurate in its descriptions even within the context of said offences. Aishbagh police station in Bhopal and Ghamapur police station in Jabalpur stood out as far as FIRs with vague descriptions of the volume of alcohol is concerned, with 62% and 23% of their FIRs respectively containing vague descriptions. It is also worth noting that in all such vaguely descriptive FIRs under the aforesaid sections, the maximum volume of alcohol concerned did not in any event exceed 1 litre.

Moreover, data on the policing of *mahua* liquor deflates the larger narrative around excise policing that erroneously identifies it with crackdowns on omnipotent liquor barons and mafia. Instead, 87% of the FIRs alleging the sale or possession of *mahua* liquor concerned alcohol in the 1-10 litre range. A mere 3% of the FIRs concerning *mahua* liquor alleged the sale or possession of alcohol between 10 and 20 litre, illustrative of the low-level 'curbs' that are actually carried out by the police.

Twelve FIRs dealt with over 50 litre of alcohol, that is, with commercial quantities. Four of these FIRs were from Aishbagh PS, Bhopal; three from Multai PS, Betul; two each from Ratibadh PS, Bhopal and Belbagh PS, Jabalpur; and one from Betul Kotwali PS, Betul.

Eleven out of these 12 FIRs dealt with *desi* liquor, and because half of these FIRs were from Bhopal district, the average volume of alcohol per FIR was the highest for Bhopal at approximately 17.4 litre (the averages for Betul and Jabalpur were 7 litre and 4.8 litre respectively). Bhopal also recorded the highest volume of alcohol in a single FIR from Ratibadh PS at 1,404 litre, in a Section 34(2) offence alleging illegal transportation; the alcohol was seized in the absence of public seizure witnesses. The other FIR from Ratibadh PS dealing with over 50 litre of alcohol was in a case where even though the *mukhbir* only provided vague information about the sale of the alcohol, the police concluded that the likelihood of the accused fleeing was absolute (*"poorna sambhavna-sandehiyo ke bhaag jaane ki"*) before even reaching the scene of the crime; the police did not record its basis for this conclusion.

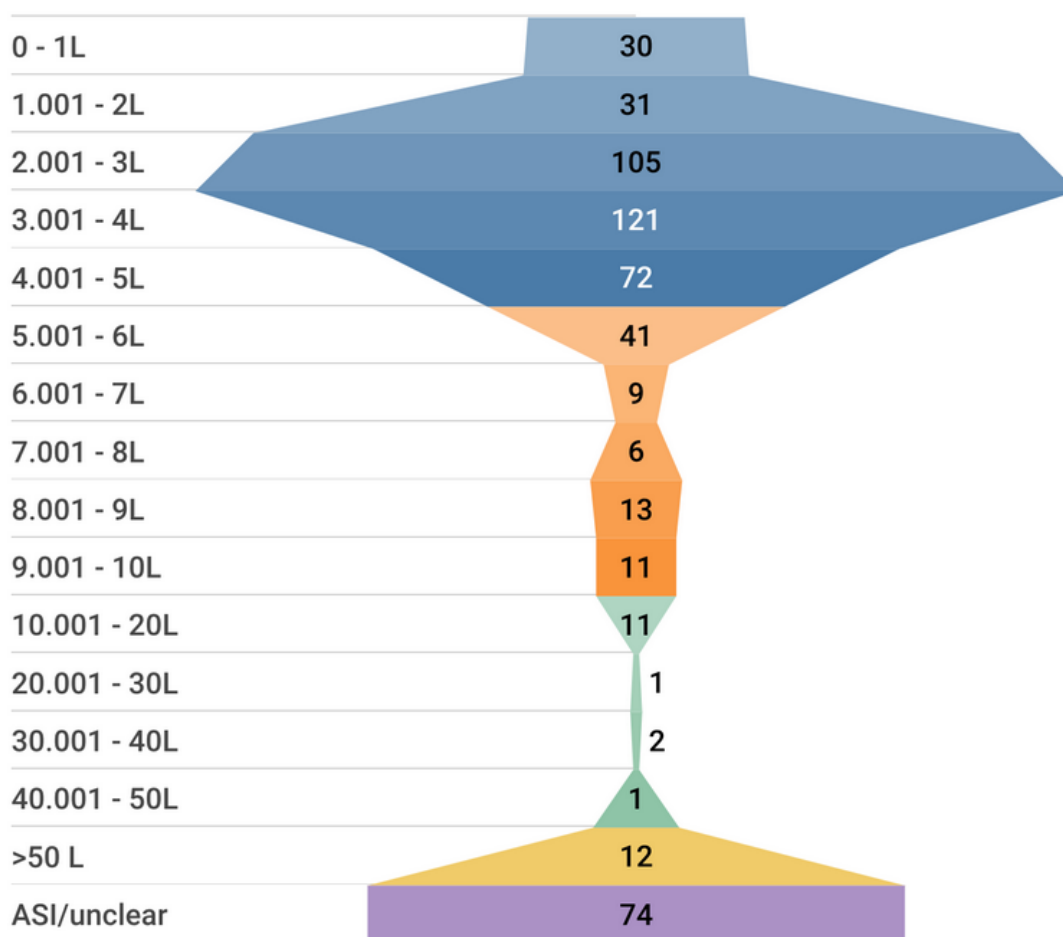


Figure 26: Quantity of alcohol allegedly found on accused persons
FIRs dataset of 3 districts

Source: MP Police Citizens Portal

***ASI** - Ambiguous Source Information - i.e. the information provided in the FIRs was unclear and vague.

Our analysis also does not show a marked difference in how the police differentiates between FIRs dealing with non-commercial and commercial quantities of liquor. Take Aishbagh PS, Bhopal for example: in 2018, two FIRs, filed less than two weeks apart, lay down virtually identical narratives: a *mukhbir* is the source of information; the tip concerns an unknown person allegedly selling alcohol; the police rushes to the specified spot with witnesses in tow; upon seeing the police, the accused starts to run; the police then encircle and capture them with the help of the witnesses; and upon inspecting the accused's belongings, they find illicit alcohol, which they proceed to seize, and arrest the accused. The only difference between these FIRs is the quantity of alcohol involved: while the first involved over 57 litre of alcohol, the second involved a little over 3 litre. Despite the glaring difference in the quantities involved, the police treated both cases similarly, with no sense of proportionality.

ii. Small Pockets—Value of the Alcohol Criminalised

At the outset, it must be noted that while the value assigned to the alcohol seized was analysed for each FIR, since several FIRs dealing with offences under Section 36, 36-B, and 36-C did not record the values of alcohol consistently, only the alleged values of alcohol for offences under Section 34(1), Section 34(2), and a combination of both Sections 34(1) and 36 have been discussed here.

	Minimum (in ₹)	Maximum (in ₹)	Average (in ₹)	Median (in ₹)
S. 34(1)	160	14,120	1,038.42	780
S. 34(1) & 36	300	1,200	766.67	800
S. 34(2)	3,100	4,68,000	54,997.83	15,825

Figure 27: Minimum, maximum, average and median values of alcohol seized in FIRs
FIRs dataset of 3 districts

Source: MP Police Citizens Portal

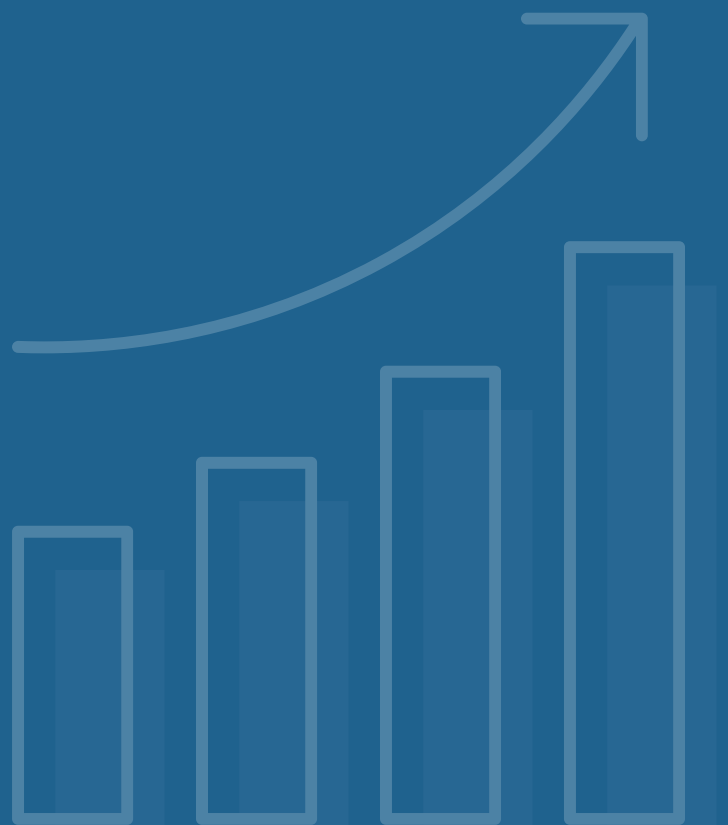
Unsurprisingly, since Section 34(2) offences deal with commercial quantities of alcohol, the alleged value of alcohol seized was also higher.

The minimum alleged value of alcohol for a Section 34(2) FIR was ₹3,100 in contrast to ₹160 for a Section 34(1) FIR. The maximum for alleged value of alcohol for a Section 34(2) FIR and Section 34(1) FIR was ₹4,68,000 and ₹14,120 respectively and the medians for a Section 34(2) FIR and Section 34(1) FIR were ₹15,825 and ₹780 respectively. Even for FIRs under Section 34(1) as well as Section 36, the minimum alleged value of alcohol was ₹300, maximum ₹1,200 and median ₹800.

These values help break the public image that excise FIRs deal with either large volumes or high values of alcohol. This public image is a product of how excise policing is portrayed as a crucial law and order function that police performs through its flying squads and excise raids against liquor mafia and other crime syndicates.⁷⁶ This is evidently not the case: FIRs registered under Section 34(1) especially show that excise policing concerns small volumes and even smaller values of alcohol.

Chapter 8:

OTHER FINDINGS FROM THE FIRS



This chapter argues that the spatial dynamics of policing are informed by caste. It highlights the excessive and arbitrary encumbrances set on bail by the police and courts. It also raises concerns about the repeated persecution of individuals belonging to marginalised communities.

i. Spatial Dynamics of Casteist Policing

Determining the sites of policing involves contextualising the spatial dynamics of policing. While the function of policing is to maintain law and order at large, some spaces are considered to be a greater policing priority than others. Public perception both shapes and is shaped by such spatial preoccupations: during an interview conducted with a practicing advocate in Bhopal, the interviewee stated with brisk confidence that excise offences only take place in *jhuggi-bastis*, not ‘respectable’ neighbourhoods. (77)

In a society segregated along caste lines in both urban and rural milieus, the logic of casteist segregation inevitably informs the priorities of policing. For FIRs alleging the accused of selling or having an intent to sell alcohol under Section 34(1) of the Excise Act, 63% of such FIRs situated the alleged criminality in public spaces such as parks and roadsides. Homes and private spaces comprised the site of criminalisation in an additional 16% of such FIRs. The accused persons whose homes and neighbourhoods are policed are predominantly Bahujan. This reveals that what is usually considered ‘private’ and assumed to be sacrosanct otherwise is constantly subjected to surveillance by the state in the case of marginalised communities. The sole case under Section 34(2) of alcohol allegedly being sold at a home or other private place from Jabalpur involves a house in the Kanjar (Vimukta community) *mohalla*.

About 14% of the FIRs alleging violation of Section 36-B situated criminality in public spaces. Bhopal contributes to 90% of these 14% FIRs, wrongly invoking Section 36-B in peri-urban and rural areas of the district. FIRs criminalising the consumption of alcohol in private spaces are largely limited to the ghettoised neighbourhoods of Bhopal district. The spatial focus of policing appears to be centred around the lives of marginalised communities.

In 25% of the FIRs related to *mahua* liquor, the private spaces of marginalised communities were identified as sites of criminality and encroached upon by the police in a concerted manner. An additional amongst the 73% of the FIRs concerning *mahua* liquor, criminality was situated in non-commercial public spaces such as parks, temples, and grocery stores in and around the neighbourhoods of marginalised communities.

In Betul, for instance, a person was charged with the intention to sell *mahua* liquor near the Dhimar *mohalla*, a neighbourhood occupied by the Dhimar caste, classified as OBC in MP.

ii. Bail Encumbrances

Nothing captures the caprice of the criminal justice system in India better than the systems of grant of bail. Bail is a post-arrest remedy that seeks to balance an individual's right to personal liberty with the state's interest in ensuring the due participation of an accused in the criminal justice process. For 'bailable' offences, bail may be secured from the police, whereas for 'non-bailable' offences, it may be sought from a competent court. At the outset, it is pertinent to note that for matters to reach to the stage where bail is required to be sought in the first place is, in and of itself, an indication of the overwhelmingly carceral tendencies of the police, especially when viewed in conjunction with how mild most excise offences penalised by the police are (mere possession, for instance, forming the allegation in about 40% of the FIRs) and how sparingly the option of issuing a notice of appearance under Section 41-A of the CrPC, inserted through an amendment in 2008 specifically aimed at curbing excessive, superfluous arrests, is exercised.

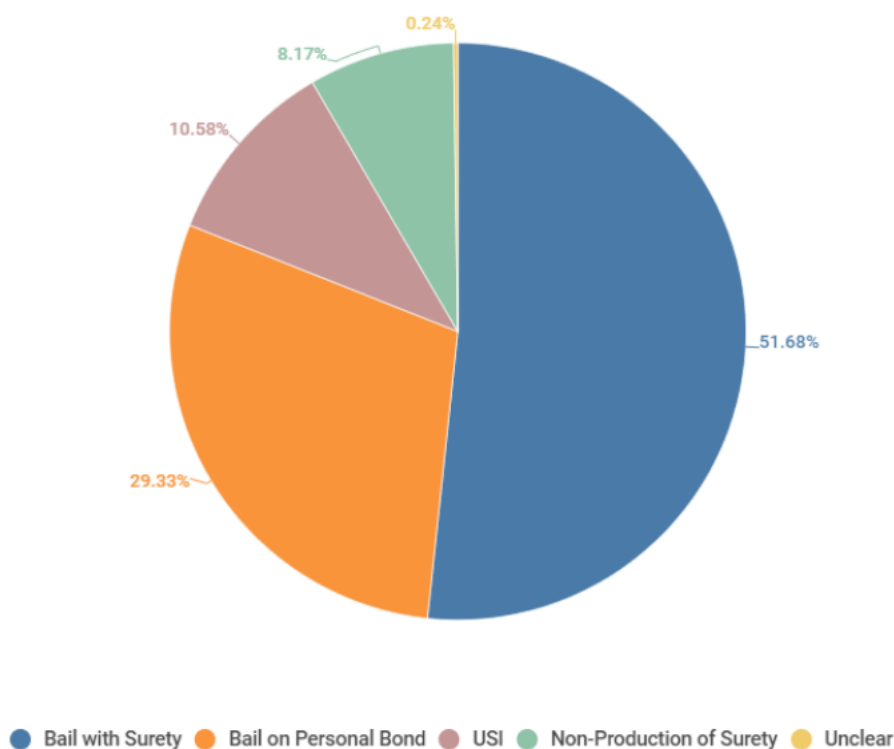


Figure 28: Grant of bail in arrests following the registration of FIRs under the MP Excise Act

FIRs dataset of 3 districts

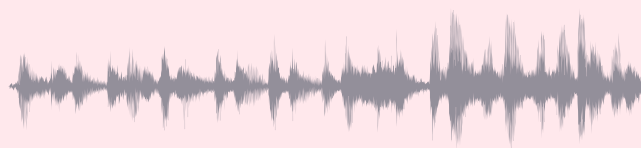
Source: MP Police Citizens Portal

***USI** – Unavailable Source Information – i.e. the FIRs provided no information.

Of the 562 accused persons in the 540 FIRs, only 105 individuals were issued Section 41-A notices, while 503 FIRs were found to have been registered under bailable offences, for which such notices can be issued. Section 34(2) is a non-bailable offence; however, it is not 'serious' and is only punishable by a maximum imprisonment for 5 years. Therefore, arrest should not be the police's default under Section 34(2). However, all the accused persons in the 12 FIRs under Section 34(2) were arrested.

Thereafter bail with surety is overwhelmingly the default option for the police, with almost half (approximately 52%) of the total number of arrested persons in the FIR dataset having to produce a person to furnish surety. The lack of any coherent and uniform policy across police stations further heightens the element of whim, with some police stations, such as Betul Kotwali in Betul and Belbagh in Jabalpur pursuing a more-or-less unilateral policy of bail with surety (93% and 91% of eligible arrests respectively). Others, such as Bhedaghat PS in Jabalpur are divided somewhat evenly between bail with surety and the second possible option, bail on personal bond; and yet others, such as Shahpur PS in Betul opting exclusively for bail on personal bond. Bail on personal bond is the far more lenient option because it does not involve providing monetary surety. However, it comprises a measly 29% of all the FIRs that culminated in arrests, with police stations such as Aishbagh PS in Bhopal almost never opting for it, at least verifiably.

Inaccessible Bail and Long Incarceration



Advocate Rakesh (name changed) has been practising for over eight years in the district court of Betul. He represents accused persons in 8-10 cases per year, primarily registered under Sections 34(1) and 34(2) of the Excise Act, and involving the sale of *mahua*. Rakesh states that bail is usually not granted by the magistrate and sessions court; he believes that these courts do not have the powers to grant bail. In his experience, bail is usually granted by the high court and bail amounts are between ₹50,000 and ₹1,00,000. Accused individuals are incarcerated for at least a month before being granted bail. He adds that most cases in his experience result in acquittal because of the lack of evidence and police fabrications.

iii. Recurring Accused

The fact that accused persons recur at all within a random representative sample speaks volumes about the problem of unrelenting police persecution. However, to contemplate the true extent of the egregiousness of the problem we must also consider how many of such recurring accused persons belong to marginalised communities and how small the sample size is in relation to the total number of FIRs registered under the Excise Act between 2018 and 2020. For instance, an SC man in Belbagh PS, Jabalpur and an ST man in Shahpur PS, Betul, X and Y, recur thrice and twice in the sample set of 60 FIRs for their police stations respectively. However, such a sample of 60 FIRs from the police station is itself only 7% and 11% of the total number of FIRs registered under the Excise Act in Belbagh PS and Shahpur PS respectively. Therefore, the analysed FIRs may be demonstrating only the tip of the iceberg. In each FIR criminalising a recurring accused, the individuals were apprehended for possessing and allegedly intending to sell alcohol below 5 litre in volume and ₹1,000 in value; all except one individual were arrested at least once, and X, the most frequently arrested accused, had to *furnish surety each time* in order to obtain bail. Unsurprisingly, about 64% of all recurring accused persons belong to SC and ST communities. Colonial legacies of selective control through such means as the Criminal Tribes Act, 1871 have persisted in modern-day policing behind the façade of seemingly neutral provisions identifying ‘habitual offenders’, ‘goondas’, etc. (78) Moreover, dogged persecution of particular individuals from particular communities has tangible economic benefits: lawyers and police officers often treat the beleaguered history-sheeter as a source of income. (79)

iv. Time of Offence

It is pertinent to note that our temporal analysis of ‘crime’ is only an analysis of when the ‘crime’ was taken cognisance of or recorded by the police, rather than when the accused individuals allegedly committed the crime. The template FIR form in MP requires the citizen-complainant or the police to note the specific time at which the FIR is registered. It is important to state that the time of the FIR registration may not accurately reflect accused persons’ realities of being implicated or arrested by the police. It may likely be that an individual has been detained or arrested for an alleged crime, but that their FIR is registered only after several hours or perhaps even after several days in police custody. In our data set, 70% of the FIRs were registered between 4pm and 11.59pm and nearly 20% of the FIRs were registered between noon (12pm) and 3.59pm in the afternoon. Just over 5% of the FIRs were registered in the mornings between 7am until noon (11.59pm) and just under 5% of the FIRs were registered between midnight (12am) and the early hours of the day until 6.59am.

Chapter 9:

CONCLUSION



Alcohol consumption is largely associated in public and state imagination with the oppressed castes and Adivasi populations since colonial times. This association has also carried several stereotypes that ascribe unruliness, laziness and violent tendencies to these communities. It is, therefore, sadly unsurprising that excise related policing is among top priority for the maintenance of law and order, and that a substantial number of the individuals criminalised and arrested under excise laws belong to the marginalised groups and oppressed castes of Indian society.

Police discretion is wielded widely in criminalising individuals under the Excise Act: the provisions under which accused individuals are charged are vague or absent, certain sections of the Excise Act are incorrectly implemented, the police often solely rely on the *mukhbir's* information and 'independent' witnesses recur in every second FIR. An overwhelming majority of the excise arrests are bailable offences, while non-bailable offences are not serious offences and the police overwhelmingly grant bail only on producing sureties rather granting bail on personal bond.

This discretion is disproportionately against individuals from marginalised communities wherein a majority of the persons arrested or implicated under FIRs belong to the SC, ST, Vimukta, OBC and possibly marginalised communities, Vimukta communities and particularly Vimukta women are disproportionately targeted by specific police stations, some accused persons have been arrested multiple times or have multiple FIRs registered against them, the identified sites of criminality often impose police control over spaces occupied by marginalised communities and the police target specific communities and threaten them with false case unless a hefty bribe is paid.

The law focuses on alcohol that is perceived as a threat to the capitalist state-licensed monopolies by primarily criminalising individuals possessing *desi* liquor of the 1 – 10 litre range which has relatively less market value and the rigorous criminalisation of *mahua*.

In spirit and action, the Indian state and the police have maintained the status quo of colonial policy – monopolising revenues from liquor regulation, and promoting temperance among ‘unruly’ people in order to safeguard ‘morality’. Foreign liquor, predominantly consumed by the dominant castes and classes of Indian society, is rarely regulated or policed. Dominant Brahminical values that consider liquor as a ‘vice’ of the ‘backward’ classes are writ large in the criminalisation of the livelihoods, private spaces, personal choices and cultural heritage of individuals belonging to marginalised communities.

The Excise Act, nestled within a legal and state architecture of apparent neutrality, is primarily then a tool to bolster dominant caste private and state revenue as well as the Brahminical virtue of temperance.

ANNEXURES

Annexure 1: Sample FIR under Section 34(1)

N.C.R.B (एन.सी.आर.बी)

I.I.F.-I (एकीकृत जाँच फार्म-I)

12. First Information contents (प्रथम सूचना तथ्य):

मैं सै. [REDACTED] थाना मुलताई मे पदस्थ होकर पुलिस सहायता केन्द्र प्रभात पट्टन मे कार्यरत हूँ आज दिनांक 09.07.2020 को चौकी से [REDACTED] 0 धारा 34ए आब.एक्ट की देहाती नालसी असल कायमी हेतु थाना भेजा है जो पेश करता हूँ देहाती नालसी हस्वजेल है-मैं थाना मुलताई ओपी पट्टन मे प्रआर.के पद पर पदस्थ हूँ कि आज दिनांक 09.07.2020 को कस्बा भ्रमण के दौरान मुखबिर द्वारा सूचना मिली की ग्राम उमरी मे लीलाधर के सामने एक व्यक्ति अवैध शराब बेच रहा है कि सूचना की तस्दीक हेतु [REDACTED] सुखदेव को हमराह लेकर मुखबिर द्वारा बताये स्थान पर पहुँचा जहा देखा कि एक व्यक्ति [REDACTED] के सामने हाथ मे थैला लिया खडा खडा था जिसे स्टाफ की मदद से घेराबंदी कर पकडा जिसका नाम पता पूछने पर उसने अपना नाम लील [REDACTED] साल नि.पांढरी बताया [REDACTED] सके पास मे रखे थैला चेक करने पर एक प्लास्टिक की कुप्पी मे 10 लीटर कच्ची महुआ शराब होना पाया गया । शराब बेचने के संबंध मे लायसेन्स पूछने पर लायसेन्स नही होना बताया एवं बेचने की गरज से रखना बताया जिसे मौके पर ही चखकर देखा तो हाथ भट्टी महुआ कि शराब होना लगा जो मौके पर ही साक्षी [REDACTED] के समक्ष दिनांक 09.07.2020 के 17.00 बजे मुता.जप्ती पत्रक के जप्त किया । आरोपी का कृत्य धारा 34ए आब.एक्ट का पाया जाने से मौके पर ही उक्त आरोपी को 17.05 बजे गिरफ्तार किया मौके पर ही सक्षम जमानतदार उपस्थित आने पर मौके पर ही जमा.मुच.पर रिहा किया गया । वापसी बाद अपराध पंजीबद्ध कर विवेचना मे लिया गया । असल कायमी हेतु जरिये सैनिक के थाना मुलताई भेजा जाता है ।

A FIR filed in Multai Police station, Betul District
under Section 34(1) of the MP Excise Act, 1915

Annexure 2: Sample FIR under Section 36-B

N.C.R.B (एन.सी.आर.बी)

I.L.F.-I (एकीकृत जाँच फार्म-I)

12. First Information contents (प्रथम सूचना तथ्य):

मैं थाना ईंटखेडी में प्र. आर. के पद पर पदस्थ होकर कार्यरत हूँ कि आज दिनांक 02.08.18 को हमराह [REDACTED] दौराने इलाका गस्त ग्राम अचारपुरा पुलिया के पास सार्वजनिक स्थान पर कुछ लोग बैठे दिखे जो पास जाकर देखा तो तीन लोग बैठे थे सामने बीच में एक शराब की बोतल में कुछ शराब बची हुई, तीन डिस्पोजल ग्लास तथा पेपर पर नमकीन रखे थे, जिनसे नाम पता पूछने पर अपना नाम क्रमशः [REDACTED]

[REDACTED] ये, जो शराब पी रहे थे, जिनसे पूछने पर शराब पीना स्वीकार किया गया, जिन्हे सूँघकर देखने एवं राहगीर गवाहान ह [REDACTED]

[REDACTED] भी सूँघवाकर दिखाया गया जो शराब पीये हुये तथा पीते हुये पाये गये जो अपराध धारा 36(बी) आबकारी एक्ट का पाया जाने से शराब की बोतल मय डिस्पोजल तथा नमकीन को गवाहों के समक्ष मुताबिक जप्ती पत्रक के जप्त कर आरोपियों को गिरफ्तार किया गया, जुर्म जमानती होने से जमानतदार तलब किया जो जमानतदार [REDACTED] पुरा को पेश किया जो कि आरोपियों का लिखित जमानतनामा तथा आरोपियों द्वारा स्वयं का मुचलका पेश करने पर जमानत मुचलके पर रिहा किया गया, बाद मय जप्तशुदा सामान के थाना वापस आया, जप्तशुदा सामान एचसीएम सुपुर्द किया गया, कायमी कर प्रकरण विवेचना में लिया गया ।

A FIR filed in Intkhedi Police station, Bhopal District
under Section 36-B of MP Excise Act, 1915.

Annexure 3: Sections 34 and 36 of the MP Excise Act

CHAPTER VII

OFFENCES AND PENALTY

34 Penalty for unlawful manufacture, transport, possession, sale etc.— (i) Whoever, in contravention of any provision of this Act, or of any rule, notification or order made or issued thereunder, or of any condition of a licence, permit or pass granted under this Act,—

- (a) manufactures, transports, imports, exports. collects or possesses any intoxicant;
- (b) save in the cases provided for in Section 38, sell any intoxicant; or
- (c) cultivates bhang; or
- (d) taps any toddy production tree/or draws toddy therefrom; or
- (e) constructs, or works any distillery brewery or vintnery; or
- (f) uses, keeps or has in his possession any material, still utensil, implement or apparatus, whatsoever for the purpose of manufacturing any intoxicant other than toddy; or
- (g) removes any intoxicant from any distillery, brewery, vintnery or warehouse licensed, established or contained, under this Act;
- (h) Bottles any liquor;

shall subject to the provisions of sub-section (2), be punishable for every such offence with imprisonment for a term which may extend to one year and fine which shall not be less than five hundred rupees but which may extend to five thousand rupees:

Provided that when any person is convicted under this Section of any offence for a second or subsequent time he shall be punishable for every such offence with imprisonment for a term which shall not be less than two months

but which may extend to twenty four months and fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees.

(2) Notwithstanding anything contained in sub-section (1), if a person is convicted for an offence covered by clause (a) or clause (b) of sub-section (1) and the quantity of the intoxicant being liquor found at the time or in the course of detection of the offence exceeds fifty bulk liter, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than twenty five thousand rupees but may extend to one lac rupees:

Provided that when any person is convicted under this section for an offence for second or subsequent time, he shall be punishable for every such offence with imprisonment for a term which shall not be less than two years but which may extend to five years and with fine which shall not be less than fifty thousand rupees but may extend to two lac rupees.

(3) When an offence covered by clause (a) or clause (b) of sub-section (1) is committed and the quantity of liquor found at the time or in the course of detection of such offence exceeds fifty bulk litres, all intoxicants, articles, implements, utensils, materials, conveyance etc. in respect of or by means of which the offence is committed, shall be liable to be seized and confiscated. If such an offence is committed by or on behalf of a person who holds a licence under the Act for manufacturing or stocking or storing liquor for sale on which duty at the prescribed rate has not been paid then notwithstanding anything contained in Section 31 the licence granted to him shall be cancelled in case he is convicted for the offence as aforesaid.

(4) The seizure or confiscation of the intoxicants, articles, implements, utensils, materials and conveyance and the cancellation of licence as provided under sub-section (2) above shall be in addition and without prejudice to any other action that may be taken under any provisions of the Act or rules made thereunder.

36. Penalty for illegal possession.— Whoever, without lawful authority, has in his possession any quantity of any intoxicant knowing the same to have been unlawfully imported, transported, manufactured, cultivated or collected knowing the prescribed duty not to have been paid thereon, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

36A. Penalty for opening, keeping or using any place as a common drinking house or for having care, management or control of, or for assisting in conducting, business of any such place.—Whoever in contravention of this Act, or of any rule, notification or order made, issued or given thereunder, or of any licence permit or pass granted under this Act.—

(a) opens, keeps or use any place as a common drinking-house; or

(b) has the care, management or control of, or in any manner assists in conducting the business of any place opened, kept or used as common drinking house;

shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than two hundred rupees but which may extend to two thousand rupees, or with both.

Annexure 4: Community classification list used in our methodology for identifying members belonging to Dalit, Adivasi and Vimukta communities

1) Vimukta

Kuchbandhiya, Bedia, Sansi, Bagari, Kalbeliya, Kabutra, Saperi, Pasi, Bacha, Bijori, Jaat, Bhaange, Pardhi, Mogiya, Bawariya, Lohpita, Seekligar, Vaddar, Beldar, Odh, Kanjar, Kabutara, Daroyi, Raisikh, Lodha, Manjhi, Veldar, Sandhya, Bairagi

2) Adivasi

Gond, Bheel, Bhillala, Barela, Kondh, Tadavi, Ukey, Jagat, Dhurve, Aadiwasi, Mannewar, Agaria, Awasia, Admaache, Baiga, Kodaku, Seharai, Oraon, Kol, Khairwar, Kondar, Damor, Damaraiya, Marskole, Maria Markam, Ekka, Parte, Mudiya, Irpache, Sirsam, Panika, Dhanka, Pandre, Aahake, Marawi, Karpe, Mawasi, Ivnati, Idpache, Ninama, Bhumiya, Seharai, Minj, Bhinjawar, Marskole, Vadiva, Barkade, Warkade, Pandram, Ivne, Tekam, Kasde, Kumre, Navde, Tumdam, Kakodiya, Oasari, Kangali, Kodi, Kathote, Kadupaa, Kanase, Karpe, Karpeti, Karoche, Kajare, Kasadekar, Kumre, Kushram, Karketa, Kodampe, Kondar, Korku, Kosare, Khandate, Khadiya, Khairwar, Gawad, Gaiki, Jamat, Jawarkar, Tandilkar, Tekam, Damar, Dudwe, Dhodi, Tumdam, Daloidiya, Dahikar, Dhanka, Narre, Nawade, Navdeti, Narwe, Nigwal, Ninama, Nihal, Batke, Barkedi, Bairiya, Balke, Bamaniya, Barela, Balkar, Baigam, Bosham, Bhumiya, Bhusamkar, Markam, Mansaram, Mankar, Mujalde, Muradbani, Mudiya, Yuvanati, Yuvane, Ranjhod, Rathia, Lawisar, Warkade, Wadiwa, Welwanshi, Seheriya, Sareyam, Sarathi, Salame, Selukar, Saur.

3) Dalit

Ahirwar, Jatav, Mehtaar, Koli, Kori, Vanshkaar, Sunkaar, Khatik, Rajak, Kanjar, Balahi, Holia, Majhi, Bhanumati, Chamar, Jharbade, Chidar, Bansod, Nanoriya/Ninoriya, Mochi, Wankhede/Bankhede, Meghwal, Silawat, Dhobi, Kewat, Raikwar / Rayakwar, Beldar, Chidhar/ Chadar, Dom/Domar/Dome/Doris, Ghasi/ Ghasiya, Satnami, Kacchi, Regar, Bhambi, Pathariya, Mang /Maang, Dhanuk, Narvariya, Bhalawi, Nagvanshi, Raidas, Basor/Basod, Bhoi, Mahar/Mehar, Koliwali, Balmiki/Valmiki, Ghodeswar, Athya, Ladiya, Nandagawali, Gharu, Dauhre, Katiya, Baheliya, Shende, Kumhar, Damami, Nagle, Chaurase, Khatarkar, Pandole, Uprale, Kajode, Sheshkar, Kochale, Jangde, Gohar

4) Possibly Marginalised

Akhande, Irani, Kanderi, Kanderi, Kasade, Kol, Gadari, Gawande, Gosai, Golkar, Gond, Chandrawanshi, Jagdev, Jawde, Joshi, Jharbade, Jha, Dabar, Dongarwar, Doble, Dhoble, Domne, Dholekar, Tatware, Tadam, Tamoli,Taram, Tidgam, Tomar, Dahiya, Dangode, Das, Dudhe, Devada, Dhakse, Dhande, Dhuriya, Navdeti, Naik, Nagore, Narayan, Nawre, Nihale, Neware, Panchaule, Pandagare, Padmakar, Pandhare, Pahadiya, Patidar, Pinjara, Pipale, Pharkade, Barade, Bakalwar, Banwanshi, Bihari, Beg, Mavasi, Madhav, Milan, Medha, Mehra, Ranawat, raaj, Raajgir, Rai, Lanjewar, Lokhande, Loth, Waghmare, Wamankar, Waikar, Waskela, Vishnoyi, Saah, Shende, Sindram, Suryawanshi, Sendre, Sonkar, Sonawane, Saudagar, Harane, Hirave.

Annexure 5: List of Corporations with Bottling Licenses, Supply Areas and Names of Founder or Promoter Families

No.	Name of the Licensed Corporation	Supply Area	Names of the Founder/ Promoter Family
1	Agrawal Distilleries Pvt. Limited	Chhindwara, Khandwa, Shajapur	Agrawal
2	Associated Alcohol & Breweries Limited	Khargone, Barwani, Ujjain, Ratlam, Agar Malwa	Kedia
		Rewa, Satna	
3	Jagpin Breweries Limited	Chhatarpur, Tikamgarh, Panna, Singroli, Anuppur	Agarwal
4	Gwalior Alcobrew Pvt. Limited	Gwalior, Morena, Bhind, Jabalpur, Damoh, Betul	Bapuna
5	Great Galleon Limited	Indore, Dhar, Jhabua, Alirajpur Balaghat, Dindori, Mandla	Could not be ascertained
6	Oasis Distilleries Limited	Burhanpur, Mandsour, Neemuch	Malhotra
		Shivpuri, Guna, Ashoknagar	
7	Som Distilleries Pvt. Limited	Vidisha, Raisen, Hoshangabad, Dewas, Sagar, Katni	Arora
8	Vindhyachal Distilleries Pvt. Limited	Bhopal, Rajgarh, Sehore	Khanna
9	D.C.R. Distilleries Pvt. Limited	Umaria, Narsingpur, Shahdol	Rathore
10	Gwalior Distilleries Pvt. Limited	Sidhi, Sheopur, Datia	Yadav
11	Gulshan Polyols Ltd.	Seoni, Niwadi, Harda	Jain

Table: List of Corporations with Bottling Licenses, Supply Areas and Names of Founder or Promoter Families

Source: Madhya Pradesh Excise Department, Country Liquor Bottling Units, <<http://excise.mp.gov.in/cs-bolling-unit>> accessed 12 August 2021.

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The CPA Project is a Bhopal-based litigation, research and capacity-building intervention committed to ending the disproportionate targeting of marginalised communities by the criminal justice system.



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