

PROPORTIONATE SENTENCING: A SOLUTION TO PRISON OVERCROWDING UNDER THE CNSA

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EXECUTIVE SUMMARY

Pakistan's prison system faces a critical challenge, with 21.46% of its total prison population incarcerated under the Control of Narcotic Substances Act (CNSA), contributing to an overcrowding rate of 152.2%. The 2022 Amendment to the CNSA exacerbated this crisis by introducing mandatory minimum sentences, removing parole, probation, and remission for most offenders, and imposing rigid, quantity-based penalties. These measures led to an increasing surge in incarceration rates for drug offences, with an 18.98% increase between 2024 and 2025. Within months of the Amendment, a 12,000-person increase in Punjab's prison population was observed.

Despite rising incarceration rates, conviction rates have plummeted—from 16% in 2022 to 2% in 2023 in Punjab. Prolonged pre-trial detention has resulted in under-trial prisoners constituting 73.41% of the prison population. The current framework disproportionately penalises low-level offenders while failing to deter large-scale trafficking effectively. These systemic inefficiencies highlight the urgent need for reforms to ensure proportionate sentencing, promote rehabilitation, and align with international human rights standards.

International best practices from jurisdictions like Portugal and Malaysia demonstrate the benefits of health-centered and rehabilitative approaches. To reduce recidivism, ease the burden on the criminal justice system, and uphold international legal obligations, Pakistan must implement comprehensive reforms to the CNSA and adopt evidence-based alternatives to incarceration.

INTRODUCTION AND CONTEXT

Pakistan's prisons are experiencing an unprecedented surge in drug-related incarcerations, with 21,824 individuals currently imprisoned under the Control of Narcotic Substances Act (CNSA), representing 21.39% of the country's total prison population. This proportion of drug-related imprisonments has contributed significantly to prison overcrowding, with national prison facilities operating at 152.2% capacity. The severity of this situation is particularly evident in Punjab, with 12,335 prisoners (56% of the total number of persons imprisoned for drug offences), followed by substantial numbers in Khyber Pakhtunkhwa (4,987), Sindh (3,145) and Balochistan (1112).¹

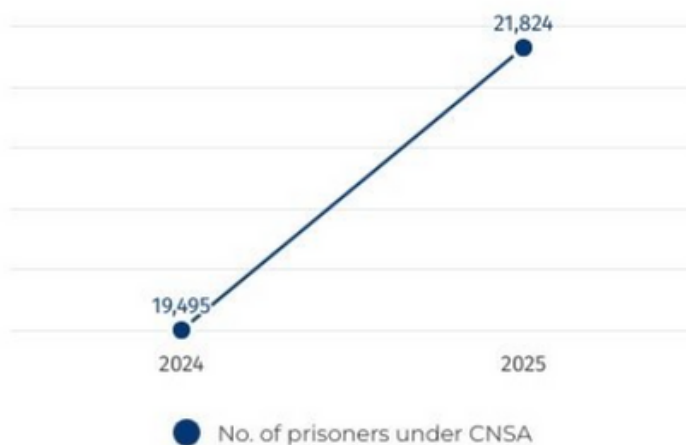
The evolution of Pakistan's drug sentencing framework has been shaped by two significant legislative changes, with distinct impacts on incarceration rates and sentencing practices. The 2022 Amendment to the CNSA introduced fundamental changes to sentencing, including expanded mandatory minimum thresholds and the elimination of parole, probation, and remissions for drug offenders (with exceptions only for women and juveniles).



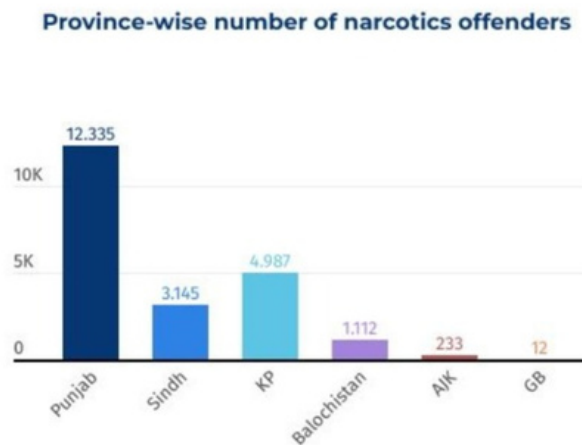
Following this Amendment, the Inspector General of Punjab Prisons documented a 12,000-person increase in the provincial prison population within three months, contributing to an overall 11.48% rise in drug-related incarcerations from 19,495 in 2024 to 21,842 in 2025.²

The 2023 Amendment marked a shift toward alignment with international human rights obligations by abolishing the death penalty for drug offences. However, its implementation reveals significant gaps. The Amendment lacks retroactive provisions or resentencing mechanisms, leaving 20 individuals on death row under the CNSA (13 in Punjab and 7 in Sindh). Moreover, courts continue to impose death sentences - at least 3 individuals have been sentenced to death for drug offences in Sindh since the Amendment's passage, indicating systemic challenges in implementing this reform.

Increase in prisoners under CNSA from 2024-25



In a strange twist, while incarceration rates have risen sharply, conviction rates have declined dramatically - in Punjab, convictions under the CNSA dropped from 16% in 2022 to 2% in 2023, meaning 98% of cases result in acquittal. This disparity has led to extended pre-trial detention periods, with under-trial prisoners now constituting 73.41% of the total prison population, representing an 8% increase over eight years. Despite the abolition of the death penalty, the sentencing framework remains heavily focused on incarceration, with limited consideration of alternative approaches such as rehabilitation, community service, or other non-custodial measures.



Case Study: Ghulam Murtaza vs. The State (2009)

The *Ghulam Murtaza v. The State* (PLD 2009 Lahore 362) judgement sought to address sentencing inconsistencies under the CNSA by establishing clear thresholds to ensure fairness and proportionality. It introduced standardised punishments based on drug quantities: up to 100 grams (up to 2 years imprisonment or a fine), 100 grams to 1 kilogram (up to 7 years imprisonment and a fine), and over 1 kilogram (up to 14 years imprisonment, life imprisonment, or death, with a minimum of life for quantities exceeding 10 kilograms). Reduced sentences were also prescribed for women and children.

The judgement emphasised uniformity in sentencing, aiming to tackle systemic issues like prison overcrowding and inconsistencies, and it allowed discretionary sentences if supported by satisfactory reasons. However, it fell short of promoting alternative sentencing mechanisms like rehabilitation or community service for low-level offenders and persons who use drugs. Enforcement of its guidelines also remained inconsistent due to arbitrary application by trial courts.

Moreover, the judgement did not differentiate between drug use and trafficking, prescribing mandatory minimum jail sentences as the default. Despite these shortcomings, the *Ghulam Murtaza* judgement is often regarded as a foundational effort to establish proportionality and consistency in drug-related sentencing in Pakistan, and its principles remain relevant in addressing ongoing issues like overcrowded prisons and the need for sentencing reforms.

CRITICAL ISSUES IN CURRENT SENTENCING PRACTICES

The 2022 Amendment to the CNSA introduced structured, rigid sentencing by assigning strict penalties for wide quantity thresholds tied solely to possession of various narcotic substances. For example, possession of bhang (a paste made from cannabis leaves) up to 999 grams, regardless of whether for personal use or sale/distribution, carries a jail sentence of up to three years and not less than ten months. Mandatory minimum punishments leave judges with no alternative sentencing option, nor is there any legal framework for diversion of persons with drug dependence to rehabilitation centres.

This approach relies solely on the concept of ‘conscious possession’ of the narcotic, a measure that creates numerous issues and opportunities for misuse. Courts have recognised these challenges in cases such as *Ameer Zaib*, where it was held that representative samples must be taken from each packet or container to ensure fairness.³ Failure to comply with this standard means sentencing can only be applied to the portion of the substance that is proven to be narcotics. The lack of differentiation in the CNSA framework results in individuals who use drugs facing the same punitive measures as manufacturers, dealers, and suppliers. This lack of distinction exacerbates the issue of disproportionate penalties, disregarding unique circumstances and the health needs of individuals.

The *Mujahid Naseem Lodhi* case further underscored the necessity of considering mitigating circumstances in sentencing under the CNSA. The Lahore High Court held that courts could impose reduced sentences if supported by satisfactory reasons, such as a confession of guilt.⁴ However, the 2022 Amendment significantly restricted judicial discretion, which is essential for ensuring fair and proportional sentencing. Without this discretion, courts are compelled to impose formulaic punishments, fostering inconsistencies and disproportionately penalising low-level offenders, as evidenced in *Mian Khan v. The State*. In this case, a juvenile offender was incarcerated rather than granted probation, highlighting the rigid and punitive nature of the CNSA’s sentencing framework.⁵

The removal of provisions for parole, probation, and remission, except for women and children, has further compounded the problem of prison overcrowding. Male offenders, who make up 98% of those convicted under the CNSA, face prolonged incarceration without opportunities for rehabilitation or early release.

The 2022 Amendment’s impact is starkly evident in provincial incarceration rates. Punjab alone accounts for over 13,000 drug-related prisoners, representing nearly 30% of its total prison population. Sindh, Khyber Pakhtunkhwa, and Balochistan also report significant numbers, reflecting the nationwide implications of this punitive approach. Despite these increases, conviction rates have plummeted, as demonstrated in Punjab, where they dropped from 16% in 2022 to just 2% in 2023. This alarming paradox highlights systemic inefficiencies, where resources are focused on detaining individuals rather than securing convictions.

INTERNATIONAL STANDARDS AND BEST PRACTICES

International human rights law establishes standards for addressing drug use and possession through a health-centered rather than a punitive lens. **The International Guidelines on Human Rights and Drug Policy**,⁶ developed by UNDP, UNAIDS, and WHO with extensive consultation with human rights experts, provides the most comprehensive framework for aligning drug policies with human rights obligations. They establish that the right to health must be central to drug policy and require states to ensure drug-related health care is available, accessible, and of good quality. According to the Guidelines, States should take concrete steps to prevent drug control measures from inhibiting access to health services, while ensuring harm reduction services are adequately funded and accessible without discrimination. The Guidelines emphasise that public health approaches and evidence-based interventions should be prioritised in addressing drug use and dependency.

The Guidelines also emphasise that drug control measures must align with human rights obligations and should never undermine dignity or create disproportionate impacts. They note that punitive approaches have led to negative health consequences by driving people away from vital health interventions and creating barriers to accessing essential services.

States are thus encouraged to utilise the flexibilities available in UN drug control conventions to repeal or amend laws and policies that restrict access to essential medicines and health services, including harm reduction. This aligns with the Guideline's core principle that drug laws and policies should facilitate rather than impede access to health care services while protecting human rights.

The UN Standard Minimum Rules for Non-Custodial Measures (**the Tokyo Rules**) provide comprehensive guidelines for the use of non-custodial alternatives such as probation, community service, electronic monitoring, and rehabilitation programs, emphasising the potential for individual rehabilitation and the reduction of unnecessary detention. Critically, the Tokyo Rules specify that pre-trial detention should be used only as a last resort, with careful consideration given to the nature of the alleged offence, the potential risk to society, and the need to ensure proper conduct of criminal proceedings. By offering a flexible approach to criminal justice, the Tokyo Rules acknowledge that punitive measures can often be counterproductive, and that successful social reintegration requires supportive interventions that maintain an individual's dignity, provide opportunities for personal growth, and ultimately reduce recidivism by addressing the underlying social and personal challenges that may contribute to offending.

Reforms across various jurisdictions also reflect a growing recognition of health-centered approaches towards drug use. In 2001, Portugal reformed its drug policy to prioritise public health responses.⁷ Under this system, individuals found with personal use quantities are referred to dissuasion commissions composed of health professionals and social workers who assess cases and recommend health interventions. Data shows that since implementing these reforms, Portugal has experienced significant drops in overdoses, HIV infection rates, and drug-related crime.⁸ Treatment access has improved markedly without a significant rise in overall drug use.⁹

More recently, in 2023, Malaysia abolished the mandatory death penalty for drug offences and shifted toward health-centered approaches by allowing courts to direct people who use drugs to treatment rather than imprisonment.¹⁰ This reform, in one of Pakistan's fellow Asian nations, demonstrates how countries in the region can effectively integrate health interventions into their drug policy framework.

STRATEGIC RECOMMENDATIONS

- Amend the CNSA to remove strict punishments with wide and disproportionate thresholds, and remove mandatory minimum punishments.
- Amend the CNSA to differentiate between personal use and trafficking, and implement diversionary pathways for persons with drug dependence towards health services and rehabilitations.
- Amend the CNSA to allow courts to consider mitigating factors such as socio-economic vulnerabilities and drug dependence in their sentencing.
- Reinstate parole, probation, and remission mechanisms in the CNSA to alleviate the immense pressure on the prison population particularly in provinces like Punjab, which reported a 12,000-person spike in its prison population following the 2022 Amendment.
- Introduce mandatory videography for arrests and evidence handling to reduce wrongful detentions and enhance the integrity of judicial proceedings.
- Establish health-focused interventions and drug rehabilitation centres to support and uphold the rights of individuals with drug dependence.
- Take all legislative, administrative and policy measures to ensure Pakistan's drug policy complies with international human rights obligations, highlighted in the International Guidelines on Human Rights and Drug Policy.

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