

THE CONTROL OF NARCOTICS SUBSTANCES ACT 1997: A CRITICAL ANALYSIS

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HISTORICAL OVERVIEW

As of January 2025, 21,824, representing 21% of the total prison population,¹ are incarcerated for offences under the Control of Narcotic Substances Act, 1997 (the "CNSA" or "the Act"). This number has risen from 19,456 prisoners in 2024. Narcotics - their use and their trafficking - are a prime regulatory issue for Pakistan, and it appears that they will remain so; Pakistan's geography - its porous border with the largest poppy cultivator in the world and its central location within Asia Major - make it a prime trafficking port.² Pakistan has had to deal with the regulation of narcotics since its infancy, owing to both internal challenges and external pressures such as international obligations and diplomatic expectations.

In 1961, Pakistan ratified the UN Single Convention on Narcotics (the '1961 Convention'), obligating it to regulate the trade and usage of drugs. Despite disparate colonial-era legislation such as the various Opium Acts and the Dangerous Drugs Act, 1930, laws addressing drug trafficking were inadequate for the purposes of the 1961 Convention.³ The year 1971 saw the UN Convention on Psychotropic Substances (the '1971 Convention'), which delineated further standards for international cooperation and domestic regulation of narcotics. Pakistan acceded to this in 1977.⁴ In 1973, the Pakistan Narcotics Board was reconstituted as the Pakistan Narcotics Control Board. A series of laws were passed regulating the pharmaceutical industry,⁵ and there was a proposal for a full-fledged law relating to narcotics in 1977.⁶ However, the proposal was shelved due to a change in government. The Prohibition (Enforcement of Hadd) Order (the 'Hadd Order') was brought in as part of the Hudood laws in 1979. It was a rudimentary piece of legislation, ill-equipped to address trafficking, fit only for punishing people who use drugs and those with drug dependencies - i.e. it punished consumption itself and is in force to date. A third UN convention came in 1988 (the '1988 Convention'), introducing standards for international cooperation, and for the policing and prosecution of drug offences within member state legal systems. The need for an update was clearer than ever.

In 1997, the CNSA came into force. It was a comprehensive code making provision for asset seizures, rehabilitation, investigation and special courts. In contrast to the Hadd Order, it provided for a much wider range of offences and granted wider authority to investigative agencies, mostly in response to the 1988 Convention, which Pakistan ratified in 1991. Since then, the CNSA has been amended numerous times, recent consequential amendments being the Control of Narcotics Substances (Amendment) Act, 2022 (the "2022 Amendment").

which reformed sentencing, and the Control of Narcotics Substances (Amendment) Act, 2023 (the “2023 Amendment”), which removed the death penalty for drug offences.

LEGISLATIVE OVERVIEW

It is helpful to produce a brief account of the structure of the CNSA.

- The preamble frames its aims; to control the drug trade and to regulate the rehabilitation of people who use drugs, referred to as 'addicts'. The 2022 Amendment added the aims of providing a structure for the forfeiture of drug money and ensuring compliance with international drug laws.
- Chapter 1 is definitions.
- Chapter 2 criminalises cultivation, possession, import or export, trafficking or financing trafficking, owning or operating premises or machinery for manufacture, acquisition and possession of assets derived from narcotics offences and has an aiding and abetting provision. It also includes sentencing provisions.
- Chapter 3 deals with Search and Investigation, bestowing investigative powers upon the Anti- Narcotics Force (the **“ANF”**); it can stop and search any conveyance or dwelling with a warrant, or without one if delay might result in evidence being destroyed or removed.
 - Some attempt to temper these powers is found in Section 26, which provides for punishment for “vexatious” use of entry, search and seizure powers. Thus, an officer who conducts a search, entry or arrest in the absence of reasonable suspicion is liable to three years imprisonment and a fine of up to 25,000 rupees. In an unsuccessful 2021 bill seeking to increase the penalty to five years, the statement of objects and reasons appended to the bill noted that the CNSA ‘has become the easiest tool to be misused by law enforcement agencies ... vexatious entries, searches, seizures or arrests have become the order of the day. The statement of objects further claimed that law enforcement officials tended to plant narcotics and misuse the CNSA.⁷
 - Section 25 does away with the standard requirement (contained in Section 103 of the Code of Criminal Procedure (the **“CrPC”**)) that witnesses be present during a search, thus doing away with the principle that a police officer cannot be a reliable recovery witness.
 - Section 29 provides for a presumption of guilt arising from the possession of narcotics. This means that in a trial under the CNSA, the prosecution only has to show that drugs were found in the accused’s possession to create a presumption of presumption of guilt, which must then be displaced.
 - This provision reverses the onus of proof.⁸ Section 25 and 29 taken together make it significantly easier to secure convictions under the CNSA.
 - Section 49A provides remand for 90 days, more than what is provided for by the CrPC.

- ▶ Chapter 4 deals with asset forfeiture. The legislation creates an infrastructure for tracing, freezing, and seizing assets thought to be linked to narcotics. Section 68 contains another presumption; where there is reasonable ground to believe that any assets were acquired through commission of an offence under the CNSA, they are liable to seizure as proceeds of an offence under the CNSA unless the contrary is proven with respect to each asset.
- ▶ Chapter 5 creates a system of special drug courts. In these courts, prosecutors work directly for the ANF.
- ▶ Chapter 6 contains provisions concerning rehabilitation; a duty is cast on provincial governments to register 'persons who use drugs' and maintain as many establishments for "treatment" etc. as necessary, and on the federal government to fund rehabilitative services. These provisions were expanded on by the Rehab Rules 2001.
- ▶ The nebulous definition of "addiction" is notable, as law enforcement is empowered to detain people that it believes are 'struggling with drug addiction'.⁹

The 2022 Amendment formalised sentencing by offering ranges of sentences depending on the drug and the quantity. These were harsher than before, and had wide thresholds. The lowest quantity range for drugs like Cannabis is up to 999 grams, meaning, that someone carrying 3 grams for personal use and someone carrying 900 for dealing are subject to the same sentencing range, and the same mandatory minimum sentences. It provides that the maximum penalty be automatically applied where drugs are sold near schools. Its most drastic change - one directly responsible for the current unprecedented level of prison overcrowding¹⁰ is that it removes any possibility of remissions, parole or probation except for women and children.

The 2023 Amendment removed the death penalty without addressing cases already sentenced to death. Before it, drug offences were punishable by death, which was arguably in violation of Pakistan's human rights obligations. Drug courts would routinely hand out death sentences that were almost never upheld by the Supreme Court.¹¹ While Pakistan has not carried out any executions since December 2019,¹² despite the removal of the death penalty from the CNSA, 20 prisoners are still on death row for earlier convictions for CNSA offences.¹³ As argued by Harm Reduction International, Pakistan is in breach of Article 6(2) of the International Covenant on Civil and Political Rights (the "ICCPR") in not commuting the sentences of those on death row.¹⁴

Also meriting mention is the Anti Narcotics Force Act, 1997 (the "ANFA"), the enforcement arm of the CNSA, which creates a federal force focused on narcotics, separate from the police. By virtue of Section 5A of this law, the ANF's remit is to tackle drug trafficking at large. The ANF is a paramilitary force and has always had an officer from the armed forces as its head, despite this not being a requirement of the ANFA. In addition to its responsibilities under the CNSA, the ANF's main functions are demand and supply reduction and international cooperation as outlined in the National Anti-Narcotics Policy.¹⁵

The CNSA contains multiple provisions that are ambiguously framed, allowing for broad and arbitrary interpretation. There is reference, in Section 9, to offences committed “near a school, college, university, education setting, or any other educational institution” being punishable with the maximum penalty but the word ‘near’ is nowhere defined in the Act. The same section stipulates that the maximum sentence for an offence involving narcotic drugs must be imposed if the offender has a prior conviction under the CNSA. Similarly, the Act requires the maximum punishment for offences involving psychotropic substances where the quantity is two kilograms or less, provided the offender has any previous conviction under the Act. If the quantity involved in a subsequent offence exceeds two kilograms, the punishment must be no less than life imprisonment. From the language, it appears that the quantity involved in the previous offence is irrelevant and a person convicted for an offence involving a minute amount would automatically face life or the maximum sentence on their second offence. This is a highly punitive model, especially considering the fact that people who work as drug mules are often also dependent on drugs, and more likely to have previous drug convictions.

IMPLEMENTATION

Implementation of the CNSA has raised many challenges. From policing to sentencing, there are numerous issues with its application.

Sentencing

Arguably, the main issue with the CNSA’s implementation is sentencing. Section 9, as originally passed,¹⁶ laid out the punishment for both possession and trafficking, providing for up to two years and/or a fine for 100 grams or less of any drug or substance, up to seven years for 100 grams to a kilogram and death or life or up to fifteen years for anything over a kilogram. Over 10 kilograms carried a mandatory minimum life sentence. The section did not differentiate between the types of narcotics, meaning an equal quantity of cannabis and heroin would entail similar sentences. The section did not distinguish between possession and trafficking.

In the 2009 Ghulam Murtaza judgment (the **“Murtaza Judgment”**),¹⁷ the Lahore High Court criticised the sentencing regime, noting starkly different sentences imposed under similar facts, and a lack of differentiation between drugs while sentencing, leading to arbitrariness. The court formulated a table that laid out the appropriate sentences for a range of quantities for different drugs. The 2022 Amendment incorporated the Murtaza Judgment into the statute, replacing Section 9 with a table¹⁸ that differentiates between narcotics and creates a scale of punishment ranging from six months to twenty years to life imprisonment depending on the quantity of the product involved. However, it also made sentencing more punitive on the whole, as noted above. With no parole, remission or probation for male offenders, lower quantity thresholds and a number of conditions automatically requiring the imposition of maximum sentence - all the act seems to accomplish is coming down hard on truck drivers hired by drug barons.

The failure to distinguish drug possession for personal use and drug trafficking and the lumping together of the two in the amendments and the original Act can result in disproportionately harsh

sentences, including for people who use drugs. This approach is at odds with international human rights standards and disproportionately affects the most marginalized segments of the society.

Policing

The shortcomings of policing in Pakistan is outside the scope of this brief, but Pakistani police forces are routinely criticised¹⁹ for a culture of corruption and, inefficiency.²⁰ Strategies of policing are sub-par; the targeting of small scale distributors and sellers is preferred and 'kingpins' and established networks of drug trafficking are ignored; the Foundation for Fundamental Rights found that in 30% of the cases reviewed by it,²¹ a senior trafficker was identified to the police by an accused, but only in 1% of the cases was one ever charged or arrested.²² The Anti Narcotics Force Reward Rules 2000 incentivise the seizure of drugs by giving ANF personnel and informants financial rewards dependent on the quantity seized. People integral to and in control of drug supply chains are rarely, if ever, found physically dealing with drugs and attacking isolated shipments does not dismantle networks of trafficking. The result is a drug trade that grows exponentially alongside a performance of drug policing that serves only to criminalise people who use and sell drugs - usually some of the most disadvantaged people in society.²³ Drug policy researchers are clear that temporary disruption of illicit drug markets cannot be a substitute for proactive enforcement strategies based on an understanding of the structure and nature of targeted criminal networks and the dynamics of the markets they exploit.²⁴ Also, while often politically popular, policing approaches of this nature are not generally effective in reducing the size of the drug trade or remedying the harms of drug use.²⁵ In fact, drug policy experts consistently note that prohibition, in and of itself, is more effective at feeding organised crime than at reducing the size of the drug market.

Rehabilitation

Another key aspect of the CNSA in practice is how it deals with people who are dependent on drugs. Section 53 empowers provincial governments to establish rehabilitation centres. The Federal Government issued a set of rules for establishing these centres in 2001.²⁷ These rules, inter alia, empower the ANF to detain people they suspect of being 'addicts' in order to bring them to rehabilitation centres. The nebulous definition of 'addict'²⁸ allows for arbitrary detention. This provision's presence in rules and not the statute itself makes its validity highly questionable and open to judicial review. Furthermore, the authority to detain individuals who are dependent on drugs violates the International Guidelines on Human Rights and Drug Policy (the "IGHRDG")²⁹ which state that the right to health as applied to drug policy includes access to evidence-based drug dependence treatment on a voluntary basis.

In practice, rehabilitation services are woefully inadequate to deal with the scale of the issue. 99.7% of people who seek access to treatment cannot afford it.³⁰ There were an estimated 170 treatment centres in all of Pakistan as of 2021, and the treatment ratio was less than 2%. The Director General of the Ministry of Narcotics Control told The Lancet in 2013 that "Pakistan has the capacity to treat 30,000 patients per annum but there are 6.45 million addicts." The gap in availability has fostered conditions for the proliferation of unlicensed and unregulated centres. There are reports of torture, trafficking and forced labour within these centres.³¹

While establishing treatment centres is primarily a provincial responsibility, the ANF runs four 'Model Addiction Treatment & Rehabilitation Centres' ("MATRC") within the remit of its Anti-Narcotics Policy 2019. A 2021 report of the Senate Standing Committee on Narcotics Control revealed they had collectively treated around 15 thousand people.

HUMAN RIGHTS AND DRUG POLICY

Issues of human rights are central to the discourse and policy on drug control. Pakistan has ratified the International Covenant on Civil and Political Rights³²("ICCPR") and the International Covenant on Economic, Social and Cultural Rights (the "ICESCR"), the two chief UN Human Rights Treaties. These create obligations for Pakistan, many of which have implications for the narcotics control regime.³³ As per the Office of the United Nations High Commissioner for Human Rights (the "OHCHR");

*"The criminalisation of drug consumption and possession for personal use has led to negative consequences for the health, security, and human rights of individuals and communities worldwide. It drives those most in need away from vital health interventions or places them in prison with significant implications for public health. Criminalisation fuels incarceration rates, overcrowded prisons, and overtaxed criminal justice systems, placing individuals at increased risk of arbitrary detention and inhuman or degrading treatment while incarcerated. Treating drug possession for personal use as a crime intensifies discrimination. Individuals are in increased conflict with the law, which lowers their chances for employment, education and other opportunities for social inclusion."*³⁴

Article 10 of the ICCPR states that 'all persons deprived of their liberty shall be treated with humanity and with respect'. The increase in incarceration caused by the 2022 Amendment is likely to imperil Pakistan's compliance with human rights standards. A Human Rights Watch report from 2023 documented severe concerns with the Pakistani prison system, noting deeply inadequate healthcare, corruption amongst prison staff, increased vulnerability for women and people with disabilities, inadequate food, water, and sanitation, reports of torture and financial extortion, and a lack of effective accountability safeguards.³⁵

Drugs are a crucial public health issue. In 2013, approximately six percent of the population of Pakistan, or 6.7 million people had used plant-based or synthetic drugs.³⁶ Hepatitis C ("HCV") prevalence among people who inject drugs in Pakistan is 51.32%,³⁷ and it is estimated that a third of new global HCV infections are located in Pakistan.³⁸ The latest numbers on the prevalence of injecting drug use in Pakistan are 0.3% percent of the population, higher than the global average.³⁹ It is crucial that Pakistan give effect to the right to health in the context of drug use.⁴⁰ However, Pakistan's current approach, focused heavily on criminalization and incarceration may be undermining public health goals. The IGHRDG recommend ensuring the availability of harm reduction services and ensuring that legislation does not criminalise harm reduction activities under incitement or abetting provisions.⁴¹

As an alternative to the model of drug policy focused solely on punishing those involved in the drug trade and people who use drugs, the IGHRDG recommend that in accordance with the right to an adequate standard of living,⁴² states ought to 'develop specific viable and sustainable

economic alternatives for individuals and communities who are particularly vulnerable to exploitation in the illicit drug economy.⁴³

The right to life is enshrined in multiple human rights treaties and in the Constitution of Pakistan. The ICCPR obligates states that retain the death penalty to reserve it only for the most serious offences.⁴⁴ Governments that retain the death penalty argue that drug offences fall under this classification,⁴⁵ but that is not the position of the body tasked with monitoring the implementation of the ICCPR.⁴⁶ As already noted, 20 people remain on death row for offences under the CNSA.^{47 48}

It is also incumbent upon Pakistan to consider the gender implications of drug policy, in keeping with its obligations under the Convention on the Elimination of All Forms of Discrimination against Women 1979 (the “CEDAW”). According to Global Drug Policy Observatory;

“Women and men are impacted by drug policy differently. This is the case not only for drug use, but also with regards to treatment and punishment. Despite being a statistical minority in all aspects of the drug trade, women tend to be most involved in the lower levels of the trade, where the greatest concentration of arrests occurs. Women additionally experience greater prejudice and judgment due to gendered social expectations.”

As noted, the criminalisation of drug offences contributes to women’s imprisonment worldwide, and this is also the case in Pakistan.⁴⁹ Pakistan’s prisons are especially dangerous for women.⁵⁰ A committee of the Ministry of Human Rights on the plight of women in Pakistani prisons found that there was ‘a critical need to reduce the proportion of under trial prisoners; to develop sentencing alternatives and non-custodial measures for female prisoners; and to improve living conditions and education and rehabilitation programmes in female prisons and barracks across Pakistan.’⁵¹ It laid down several recommendations aimed at bringing Pakistan’s prison system in line with the Bangkok Rules.⁵² The recommendations have not been implemented. The IGHRDG specifically call for an end to the detention and punishment of women due to drug use during pregnancy.⁵³ Pakistan’s mandatory minimum sentences place it at odds with this recommendation. These mandatory minimums, and the general culture of the 2022 Amendment’s sentencing regime, prevent judges from considering individual circumstances of offenders while sentencing. While it leads to unjust sentencing, this is also contrary to the IGHRDG’s recommendation⁵⁴ that states ensure that courts have the power to consider mitigating factors in light of women’s caretaking responsibilities.

INTERNATIONAL APPROACHES TO DRUG POLICY

The history of international responses to the drug trade is centered largely around the ‘war on drugs’ that began in the seventies, led by the United States of America. Fifty years on, drug use and trafficking have proliferated, and with the advent of synthetic drugs become more lucrative and more violent.⁵⁵ A sentiment expressed by countless experts and echoed by the Global Commission on Drug Policy went thus: ‘The global war on drugs has failed, with devastating consequences for individuals and societies around the world.’^{56 57}

Recent divergences in approach allow for deeper analyses. One such approach is that taken by numerous countries⁵⁸ including Portugal and the Netherlands. In 2001, Portugal decriminalised the use, acquisition and possession of illegal drugs as long as the amount was no more than 10 days supply for the personal use of an 'average person' who uses drugs. Drug use became a health issue rather than a law and order issue.⁵⁹ As per the Guardian, Portugal has seen dramatic drops in overdoses, HIV infection and drug-related crime since.⁶⁰ Evidence indicates reductions in drug-related harms and criminal justice overcrowding⁶¹ as well as an increase in the number of people entering voluntary treatment without a significant rise in drug use generally.⁶² In the Netherlands, while still de jure illegal, recreational use and selling is de facto decriminalised under what is called 'gedoogbeleid' (lit. "tolerance policy") for 'soft drugs'. In 2023 in response to an overdose crisis,⁶³ B.C, Canada was granted a three-year exemption under the Controlled Drugs and Substances Act,⁶⁴ allowing the possession for use by adults of up to 2.5 grams amounts of hard drugs.

This is not exclusive to the West; Malaysia previously had a zero-tolerance policy for drug trafficking, and amounts as low as 200 grams of cannabis were punishable with the death penalty. This was abolished in 2023 and decriminalisation in favour of rehab for personal use amounts was implemented.⁶⁵ Regulation in place of relentless criminalisation can be a powerful avenue to drug control, and drug policy experts have already charted pathways to achieving this.

Thirty countries have implemented some amount of decriminalisation for personal use amounts,⁶⁶ and the UN Common Position on drug control policy commits to promoting it where appropriate. While states are obligated to regulate drugs under the UN Conventions, the conventions do not obligate enforcement or specify sanctions, which are left to individual states.⁶⁷ Article 33 of the 1961 Convention explicitly allows a state to permit possession of drugs with legal authority and allows for measures for treatment and care to take the place of punishment as per Article 36.1. It is recognised now that there are no treaty requirements regarding criminalisation or punishment for simple possession.⁶⁸

Recent decades have also seen the emergence of a greater focus by policymakers and experts on harm reduction,⁶⁹ led by countries such as Canada⁷⁰ and Australia.⁷¹ The US-based National Harm Reduction Coalition defines harm reduction as 'a set of practical strategies and ideas aimed at reducing negative consequences associated with drug use, and also a movement for social justice built on a belief in, and respect for, the rights of people who use drugs'.⁷²

This approach acknowledges people will use drugs regardless of the law, and that the state's responsibility to its citizens means it should take steps to ensure that the potential harm from drugs is mitigated. This is done by, among other things, providing services such as clean needles, harm reduction education, safe injection sites and drug testing kits to populations with high instances of drug use. As per UNAIDS, "In countries where drug use is decriminalized and comprehensive harm reduction is available, HIV prevalence and transmission tend to drop sharply among people who use drugs."⁷³ There exist NGO-led programs in Pakistan undergoing harm reduction campaigning, such as *Nai Zindagi*,⁷⁴ but much more needs to be done.⁷⁵ As per the Global Commission Drug policy;

“The international drug control system was founded with two core goals. First, it sought to reduce the negative health consequences generated by drugs. Second, it promised to guarantee access to essential medicines. Neither of these aims has been achieved. To the contrary, drug policy emphasising criminal justice has generated new social and health problems.”⁷⁶

As noted above, strategies for drug control have begun to vary,⁷⁷ and a new 21st century approach to drug policy has dawned, reflected by the 2016 United Nations General Assembly Special Session on the World Drug Problem.⁷⁸ It is for Pakistan to seize the opportunity to create a new and independent drug policy that works for its own circumstances and set of issues.

RECOMMENDATIONS

A. Legislative Reform and Sentencing

- The 2022 Amendment’s removal of non-custodial sentencing is counterproductive to rehabilitative efforts and contributes to severe overcrowding. It should be reversed.
- As an alternative to decriminalisation, a new sentencing range for low amounts (e.g 10 grams of cannabis) could be introduced, with possibility of non-custodial sentences.
- Sentencing should take into account aggravating and mitigating factors. In the UK, most offences have sentencing guidelines created by the Sentencing Council, which judges are generally bound to follow. These guidelines categorise an offence based on culpability and harm, which then provides a starting point for a sentence that can be adjusted based on aggravating and mitigating factors. Something similar will be appropriate for Pakistan.
- Prisoners who have been sentenced to death for offences under the CNSA should have their death sentences commuted. Various policy options including legislation, executive action and strategic litigation may be explored to achieve this.
- Law enforcement resources should prioritise targeting drug suppliers and manufacturers rather than individual users, with a focus on dismantling trafficking networks and production facilities.

B. Rehabilitation:

- An approach directed towards scientific rehabilitative efforts should take the place of the current focus on custodial sentences and criminalisation.
- The government should ensure it is taking steps to reduce harm stemming from the use of drugs by adopting international best practices for harm reduction.
- The question of whether it is the federal government or a provincial government that is responsible for funding and maintaining rehabilitation centres should be resolved. Responsibility should rest with a single agency either federally or with one agency per province.
- The registration of private rehabilitation centres should be ensured and unlicensed centres should be shut down as soon as possible. The regulatory framework for rehabilitation centres should be strengthened to ensure check on human rights abuses.
- The operation of publicly-run centres should be centralised, and more funding should be provided for the setting up of publicly-run rehabilitation centres.

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