

Justice at the Crossroads: Proportionality, Islamic Jurisprudence, International Law and Drug-Control Legislation Reforms in Pakistan

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Abstract

The drug-control regime in Pakistan operates at the intersection of criminal law, public health, constitutional law, Islamic jurisprudence and international human rights law. This paper examines how Pakistan can strengthen drug control while moving towards proportionate, individualized and publicly defensible sanctions. It adopts a qualitative doctrinal and theoretical approach based on international drug-control treaties, the International Covenant on Civil and Political Rights (ICCPR), United Nations guidance, Pakistani legislation, reported judicial decisions, Islamic legal scholarship, criminological literature and selected comparative materials. The central argument is that the international drug-control conventions require States parties to criminalize specified forms of illicit conduct, but they do not prescribe a uniform sentencing scale or require the imposition of excessively severe penalties.

The Human Rights Committee's interpretation of Article 6 of the ICCPR is particularly significant because it restricts the death penalty, where retained, to the "most serious crimes," understood narrowly as crimes involving intentional killing. Drug offences do not meet this threshold. The Control of Narcotics Substances (Amendment) Act, 2023 is therefore significant because it removed death as a prescribed punishment from the relevant provisions of Section 9 of the Control of Narcotics Substances Act, 1997 (CNSA). Nevertheless, the removal of capital punishment does not by itself resolve proportionality concerns where lengthy or mandatory imprisonment may limit individualized sentencing. Islamic jurisprudence also provides a flexible normative framework through ta'zīr and maqāṣid al-sharī'ah, under which sanctions may be differentiated according to the nature of the offence, culpability, harm and public interest. The study therefore argues for differentiation between high-level organized trafficking, commercial distribution, lower-level participation and drug-use disorders; greater certainty and quality of enforcement; structured judicial discretion; and evidence-based treatment, rehabilitation and social reintegration.

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Introduction

Pakistan is a key player in regional drug-control policy due to its close border with Afghanistan and its geographical position on the known drug-traffic routes. In Pakistan, issues related to drug use, drug use disorders, possession, trafficking and associated criminality are a problem. Thus, drug policy is not only a criminal justice problem but also a public health and social protection issue, as well as a border management, treatment capacity and institutional legitimacy issue. Historically, the Control of Narcotics Substances Act, 1997 (CNSA), has been the main federal legislation defining narcotics offences and the nature and quantity of narcotics has been an important aspect in the

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determination of punishment for narcotics offenders. Meanwhile, international policy has grown more and more focused on prevention, treatment, rehabilitation and social re-integration in addition to supply reduction and enforcement. (World Health Organization, 2019; Government of Pakistan, 1997; United Nations Office on Drugs and Crime, 2013).

The Pakistani narcotics legislation has received major amendments. The Control of Narcotics Substances (Amendment) Act, 2022 added more specific and significantly raised the amounts of penalties to be imposed for different types and quantities of specified narcotics substances and psychotropic substances. According to the official notification on presidential assent, the amendment was for imposing death sentence or life imprisonment for some of the offences of possession of substances like heroin, morphine, cocaine and methamphetamine in large quantity. If the quantity of heroin/morphine seized is six kilograms or more, it may be punishable by death or life imprisonment, depending on statutory requirements. (Government of Pakistan, 2022).

The amendment enacted in 2022 thus showed high priority on deterrence, in terms of the severity of punishment. Deterrence is a proper goal of criminal law, especially if an offence is organized and is economically motivated. Scholars suggested that deterrence may be greater the certainty of apprehension and punishment, rather than the severity of sentence. (Nagin, 2013; Paternoster, 2010).

In 2023, another significant piece of legislation was enacted. The CNSA's Section 9 was amended by the Control of Narcotics Substances (Amendment) Act, 2023 (Act No. XXXVIII of 2023). It struck out the words “punishment for death or” from the corresponding punishment table and replaced “may be death or” in the above-mentioned provision with the word “shall be”. Thus, under Section 9 the death penalty was deleted from the federal narcotics offences. (Government of Pakistan, 2023).

This reform is important in relation to Article 6 of the ICCPR. The Human Rights Committee has taken a narrow view of the “most serious crimes” restriction and clarified that the death penalty can only be used in relation to intentional killing. Offences relating to drugs thus do not meet this standard. The 2023 amendment is therefore a significant shift in Pakistan's federal narcotics sentencing regime in the direction of international human-rights standards. (United Nations, 1966; United Nations Human Rights Committee, 2019).

The central policy question is hence the question of differentiation. Persons in illegal drug markets might have significantly different roles, ranging from dependent users to coerced couriers to street-level drug sellers, commercial distributors, or organizers/financiers of trafficking groups. Their functions, motives, gains and extent of responsibility can vary widely. This can mean that a quantity-based sentencing model is also likely to overlook important variance in culpability. Determining proportionality means that quantity must be taken into account in conjunction with considerations like role, intent, coercion, the profit motive, prior convictions and disorders related to drug use. (Caulkins & Chandler, 2006; Frase, 2005; Tonry, 2016).

Research Questions

1. What limits does international law impose (if any) on drug-related offenses when international drug treaties are examined in conjunction with international legislation on the death penalty?
2. How does Islamic criminal law address drug trafficking? Does it prescribe legislated sentences or does it leave each case to judges to assess individually?
3. Do the 2022-2023 Pakistani reforms move closer to or further from the principle of proportionality emphasized by both systems?
4. What type of institutional organization, through legislation, judicial discretion, or a combination of both, would best align the Pakistani criminal framework for drugs and narcotics with this common standard?

Methodology

Qualitative, doctrinal and theoretical research is used in this research. It reviews laws, constitutional texts, judicial rulings, international conventions, UN and WHO recommendations, criminological publications, Islamic legal expertise and some comparative legal sources. No primary survey, interview or other empirical data were gathered. The doctrinal approach is suitable as the key questions are of interpretation and interaction of legal norms and criminological literature is consulted to review deterrence, punishment, treatment, rehabilitation and reoffending. Comparative materials are used as policy lessons instead of models to be mechanistically transplant to Pakistan. (Creswell & Poth, 2018; Government of Pakistan, 1973; United Nations, 1961/1972, 1966, 1971, 1988).

The analysis is done under the three principles: Proportionality, appropriate sanctions and public interest. Proportionality relates to whether or not the punishment is relative to the severity of the crime and the degree of blame of the offender. Appropriate sanctions refer to the suitability of imprisonment, treatment, supervision, rehabilitation or any combination of sanctions for different types of offenders. Public interest involves asking the question of whether drug-control policies are indeed effective in enhancing public safety, minimizing drug-related harm and boosting trust in legitimate institutions and communities. (Frase, 2005; Tonry, 2016; Auda, 2008; WHO & United Nations Office on Drugs and Crime, 2020).

The International Law and Drug-Control Regime

The modern international drug-control system is based on three key conventions – the Single Convention on Narcotic Drugs, 1961, as amended by the Protocol to 1972; the Convention on Psychotropic Substances, 1971; and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. These treaties include international regulations on narcotic and psychotropic drugs and commitments by States parties to combat certain types of drug abuse. They don't, however, set an overall compulsory sentencing framework for all drug offences. Domestic punishment continues to be governed by the domestic law and by other international obligations applicable thereto, such as the human rights obligations. (United Nations, 1961/1972, 1971, 1988).

The Single Convention acknowledges that narcotic drugs have legitimate medical and scientific applications and sets up measures to prevent their illegal cultivation, production, possession and trafficking. Article 36 mandates some behavior to be considered punishable offences, subject to the constitutional principles of each State party and Article 38 deals with measures pertaining to prevention, treatment, education, aftercare, rehabilitation and social reintegration. The Convention thus consists not only of obligations to enforce but also measures relating to health and rehabilitation. (United Nations, 1961/1972).

The Convention on Psychotropic Substances, 1971 also establishes international controls, but also provides for medical and scientific uses. The 1988 Convention bolsters the international cooperation in the fight against illegal trafficking and related criminal activity. Article 3 calls on States parties to ensure that certain conduct is made criminal offences and sanctions should be commensurate with the seriousness of those offences. It also acknowledges treatment, education, aftercare, rehabilitation and social reintegration as potential alternatives, in appropriate cases, especially in cases of drug-use disorders. (United Nations, 1971, 1988).

An exclusively punitive response need not be the only approach to be taken within the international drug-control framework. It allows for robust responses to illegal trafficking and is compatible with and allows for adequate treatment and rehabilitation of persons whose offending behavior is intimately related to drug-use disorders.

United Nations Conference on International Human Rights and Capital Punishment. UN Conference on International Human Rights and Capital Punishment.

Article 6 of the ICCPR is the main international human-rights limitation on death penalty. Article 6 guarantees the right to life, which is inherent, and in countries which still have the death penalty, it limits its use to “most serious crimes.” The Human Rights Committee has given a narrow interpretation to this expression. As General Comment No. 36 makes clear, the “most serious crimes” test should be read in the context of the “extreme gravity” of intentional killing. This threshold is not satisfied by drug-related offences and thus cannot be found as a lawful basis for imposing death penalty under Article 6. The Committee also stresses on individual assessments and protection from any arbitrary or mandatory capital punishment. (United Nations, 1966; United Nations Human Rights Committee, 2019).

The international policy landscape has also been increasingly moving towards a balance between drug control, public health and human rights. In 2016, the outcome document of the United Nations General Assembly reaffirmed the international drug-control conventions, but with a strong focus on prevention, treatment, rehabilitation, social reintegration and respect for human rights. WHO and UNODC guidance also considers treatment as a critical part of responses to drug-use disorders and encourages alternatives to conviction and punishment, where legally and otherwise appropriate and suitable to the circumstances. (United Nations General Assembly, 2016; WHO & UNODC, 2018, 2020).

This policy does not need to involve decriminalization of serious trafficking. Instead, it helps to distinguish between serious cases of organized trafficking and the behavior more commonly found in drug-use disorders for which treatment and rehabilitation might be more suitable.

Islamic Jurisprudence and Drug Offences.

In the foundational texts of Islam, modern narcotics are not named as such as classical intoxicants were. Thus, Islamic jurists and modern-day Muslim legal frameworks have tackled narcotics in the context of wider principles of intoxication, injury, guidance of the intellect, public good and lawful authority. It is crucial that the banning of harmful substances should not be confused with the criminal penalty that may be imposed for the illegal possession, use or trading of such substances. (Auda, 2008; Kamali, 2008).

Ta'zīr is a really relevant concept. Ta'zīr relates to acts that are not specifically mentioned in the sacred text, nor given a fixed hudud punishment and is left to the discretion of the competent authority or judge who will decide on the appropriate sanction based on the circumstances of the offence and the offender as well as the requirements of justice and public welfare. This flexibility allows for a normative foundation to distinguish between sanctions based on culpability, harm, intention, and context. But it does not mean that the activity of serious narcotics trafficking should be lightly punished; it means that the punishment should be adjusted based on the nature and seriousness of the activity. (Kamali, 2008; Auda, 2008).

Maqāṣid al-sharī'ah offers another set of parameters of public interest. Protection of intellect has a direct relevance to substance misuse while protection of life, property and social order have relevance to measures against trafficking and drug related harm. Maṣlaḥah can also help to sustain treatment and rehabilitation when it is best for people and communities than imprisonment alone. Thus, deterrence, accountability, treatment and recovery may be considered complementary rather than mutually exclusive objectives. (Auda, 2008; Kamali, 2008).

It is thus wrong to suggest that Islamic jurisprudence calls for the execution of an individual for any and all drug trafficking offenses, or that it calls for the non-punitive treatment of all drug offenders. A more defensible doctrinal position is one which allows differentiated sanctions based on the seriousness of conduct, culpability, harm and interests of society, as subscribed to by the principles of public-welfare and ta'zīr. (Auda, 2008; Kamali, 2008).

Constitutional and Federal Framework in Pakistan

In the Constitution of Pakistan, there is an interplay between Islamic concepts, fundamental rights and statutory criminal laws. The State religion is Islam (Article 2); laws have to be brought in line with the injunctions of Islam under Article 227; and the jurisdiction of the Federal Shariat Court is determined in relation to repugnancy of laws to the injunctions of Islam (Article 203D). The Constitution also ensures certain fundamental rights and sets up legislative and judicial framework for enacting and enforcing criminal law. (Government of Pakistan, 1973; Kennedy, 1996; Lau, 2006).

Pakistan has ratified ICCPR in 2010. There are also provisions that relate to the development and application of narcotics policy: the right to life, the right to a fair trial, the right to humane treatment and the right to equality. The international law does not say that Pakistan cannot criminalize the practice of drug trafficking but Pakistan shall use its powers under criminal law in accordance with its obligations under the relevant human-rights treaties. In particular, the Human Rights Committee's interpretation of Article 6 is relevant to any use of capital punishment for drug offences. (United Nations Human Rights Committee, 2019; United Nations, 1966).

CNSA is still the main federal act, which regulates narcotics offences. It regulates, among others, cultivation, possession, manufacture, transportation, import and export, trafficking, related offences, as well as investigation, prosecution and forfeiture. Its statutory framework also has had provisions relating to treatment and rehab which reveal that narcotics control has not been solely associated with imprisonment. (Government of Pakistan, 1997; UNODC, 2023).

Proportionality, Quantity Based Sentencing.

The quantity is significant as larger quantities may suggest commercial dealing or significant potential for distribution. However, quantity does not necessarily provide the exact extent of culpability of the offender or what their role was. The people involved in the same amount can have very different roles in a drug market, ranging from couriers to street dealers, commercial distributors or organizers.

A proportionate sentencing mechanism should thus take into account quantity, in conjunction with role, intention, coercion, financial gain, previous convictions, organizational involvement and disorders related to drug use, where they are legally relevant. Preventing the lumping of materially different behaviors together. (Caulkins & Chandler, 2006; Kleiman, 1992; Frase, 2005).

The 2022 Amendment

The Control of Narcotics Substances (Amendment) Act, 2022, provides for significant overhaul of Section 9 of the CNSA, and adds comprehensive punishment matrix depending on the type and quantity of narcotics or psychotropic substances. The amendment raised the penalties for particular offences involving a large quantity. Some of the crimes, which involved "large amounts of heroin, morphine, cocaine and methamphetamine," may receive the death penalty or life in prison, along with "significant fines," the official presidential statement said. (Government of Pakistan, 2022).

Thus, the amendment for 2022 is an example of legislators' dependence on the severity of punishment as a deterrent measure. Deterrence is a legitimate goal – especially with regard to organized and profitable trafficking. However, criminological research warns that a direct link between the severity of sentences and the reduction of crime should not be assumed. The threat of detection and punishment may be the more important issue for deterrence than length of sentence. (Nagin, 2013; Paternoster, 2010).

Even where sentencing regimes are formally equal, they can have substantively inequitable consequences if they are also mandatory or severely restrict the sentencing court's discretion to take

into account culpability and individual circumstances. Sentencing scholarship thus undermines the ideal of a structured discretion: while laws can and should facilitate consistency, they must also be able to reflect important distinctions between offenders. (Frase, 2005; Tonry, 2009, 2016).

The 2023 Amendment

The CNSA's Section 9 was amended by the Control of Narcotics Substances (Amendment) Act, 2023 (Act No. XXXVIII of 2023). The relevant table in subsection (1) was amended by the omission of the words “punishment for death or”. For subsection (2), in the proviso in the specified case, the words “may be death or” were substituted for by the words “shall be.” As a result, Section 9 of the relevant federal narcotics offences was amended to take out death as a prescribed punishment. (Government of Pakistan, 2023).

This reform is important in regard to Article 6 of the ICCPR and the Human Rights Committee interpretation of the meaning of “most serious crimes”. It also marks a significant departure from the 2022 system where death was an option for certain enumerated heavy crimes. The Government of Pakistan (2022, 2023), the United Nations (1966) and the United Nations Human Rights Committee (2019) have all cited this as evidence.

But the abolition of the death penalty does not necessarily end the issue of proportionality. Where the terms of imprisonment are very long, or where they are mandatory, they may still raise questions of individualized justice if they do not adequately take into account differences of role, culpability, coercion or other relevant circumstances. The question that remains after 2023 is, therefore, how the remaining sentencing matrix can remain consistent and allow for legally fit individualized assessment. (Frase, 2005; Tonry, 2016).

The Significance of Court Decisions and Sentencing Precedents

Ghulam Murtaza & another v. The State (PLD 2009 Lahore 362), is also on the point of development of consistency in sentencing in narcotics cases. The case is significant because it considers consistency of sentence and the interplay of statutory sentence based on quantity and sentence assessment. It shows the larger issue of the need to have transparent and rational sentencing and not a disparity between similar cases without explanation. The petitioner was Ghulam Murtaza & another vs.) The State, PLD 2009 Lahore 362).

It's important in the case for the current analysis because the principle it embodies—that consistency and individualized justice need not be mutually exclusive—is important. A structured sentencing process can minimize unwarranted variation in sentencing without losing the ability to take relevant considerations into account. (Frase, 2005; Tonry, 2016).

Ameer Zeb v. The State, PLD 2012 SC 380, is also a significant Supreme Court precedent on the interpretation of the CNSA, especially as regards the evidentiary and statutory treatment of narcotics quantity. It must be made clear, however, that this is not intended as a general guideline to sentencing under the statutory regime from 2022. It is important to take note of any subsequent

amendments to Section 9 in the context of its continued relevance. (*Ameer Zeb v. The State*, PLD 2012 SC 380).

Time is thus a factor. Decisions made by the judiciary under previous versions of Section 9 cannot be considered controlling to apply to the amended 2022 and 2023 framework. Their ongoing importance lies more in a conceptual and interpretive sense with reference to legality, consistency, evidentiary evaluation, and individualized sentencing.

A good sentencing policy should therefore be a blend of directives and discretion. It should ensure that appropriate sentencing ranges or statutory categories are identified as well as aggravating and mitigating factors, require reasons to be given for substantial deviations where legally allowed and provide for good appellate scrutiny. (Frase, 2005; Tonry, 2016).

Federalism, Provincial Legislative Competence and Narcotics Control in Pakistan

Since the Eighteenth Amendment there have been significant changes in the constitutional framework of Pakistan, such as the removal of Concurrent Legislative List and the increased legislative responsibility of the provinces. Article 142 and 143 have a special bearing on the points of legislative competence and inconsistency between the federal and province legislatures. Narcotics control needs to be analyzed, therefore, in a federal system with federal legislation and provincial legislation and institutions. (Government of Pakistan, 1973).

The Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019 (Act No. XXXI of 2019) has been approved in Khyber Pakhtunkhwa. The Sindh Control of Narcotic Substances Act, 2024 (Sindh Act No. VIII of 2024) and Punjab Control of Narcotic Substances Act, 2025 (Act LXIV of 2025) were enacted by Sindh and Punjab, respectively. Legislative action of the provinces indicates the increasing provincial role in narcotics control. Provincial Assembly of Khyber Pakhtunkhwa, 2019, Provincial Assembly of Sindh, 2024 and Provincial Assembly of the Punjab, 2025.

Provincial legislation cannot automatically replace federal legislation. The issues of legislative competence, applicability and inconsistency should be considered in light of the Constitution and the wording of the relevant legislation. Provinces play a crucial role in the local enforcement, prevention, treatment and rehabilitation of narcotics trafficking, and coordination becomes especially significant when the trafficking of narcotics extends beyond the boundaries of individual provinces or countries. (Government of Pakistan, 1973).

While decentralization can offer opportunities for policy innovation, it can also lead to disparities in enforcement and treatment. In Pakistan, common principles of legality, proportionality, culpability, due process and evidence-based treatment are thus needed with appropriate provincial flexibility in implementation.

Rehabilitation and Evidence-Based Drug Control are the Solution to Deterrence.

Deterrence is a proper aim of criminal law, particularly with regard to organized and lucrative trafficking. The effectiveness of deterrence, however, is not just dependent on the severity of the

punishment, but on the certainty and timely detection and enforcement. So, Pakistan needs to focus more on investigation, intelligence sharing and forensic, prosecution, border control and financial investigation and not much on more and more years of imprisonment. (Nagin, 2013; Paternoster, 2010).

Enforcement efforts need to target those who organize, finance, facilitate and significantly profit from illegal drug markets as well. Continuous arrest of low-level offenders may be not very effective in affecting trafficking organizations. It should be more strategic and focus on the organizers, the financial contributors, the repeat high-level traffickers and facilitators, and be proportionate to the culpability of lower-level participants. (Kleiman, 1992; Caulkins & Chandler, 2006).

If there is a close association with drug-use disorders, treatment and rehabilitation must be a significant part of the response to offending behavior. Addiction is both a biological, psychological and social process and may involve medical, psychological, social and behavioral responses. WHO and UNODC place great importance on evidence-based, ethical, accessible and integrated systems of treatment. (Koob & Volkow, 2016; Volkow et al., 2016; WHO & UNODC, 2020).

Also, in line with international guidance, alternatives to conviction or punishment are agreed upon for suitable cases related to persons suffering from a drug use disorder, within the framework of domestic law and the specific circumstances of the case. These options are not to be interpreted as a waiving of accountability. Instead they can link accountability to treatment and recovery where this is likely to provide a reduction in harm and future offending. (WHO & UNODC, 2018, 2020).

Evidence on drug courts and other criminal-justice interventions based on treatment suggests that they all have mixed results depending on the programme design and implementation. Thus, Pakistan cannot be presuming that any one intervention will work the same way for all offenders. Treatment options should be supervised by professionals, based on evidence and be systematically evaluated. (Mitchell et al., 2012).

A differentiated system should therefore use different tools for different problems: intelligence-led investigation and prosecution for serious organized trafficking; evidence-based treatment and continuity of care for drug use disorders; and, if legally appropriate, supervision, rehabilitation and reintegration for lower risk offenders. The principle should be: differentiate based on culpability, risk and type of conduct. (WHO & UNODC, 2018, 2020; Frase, 2005; Tonry, 2016).

Comparative Lessons from Iran

Iran is a relevant comparative example as it also has an Islamic legal system and historically harsh drug-offence laws. In 2017, the Iranian anti-narcotics law was amended, changing the thresholds and situations around capital punishment for drug offences and decreasing the scope of cases that could be sentenced to death. The reform did not make all narcotics offences non-criminal, but it did highlight that there can be significant legislative rebalancing of a harsh narcotics regime in a Muslim-majority legal system. (Islamic Consultative Assembly of Iran, 2017; Human Rights Watch, 2017).

The Iranian experience can be helpful for Pakistan as a comparative example not as a transplant. It shows that narcotics policy can be adjusted by changing sentencing thresholds and the ambit of the capital punishment without compromising criminal sanctions for serious narcotics trafficking. In 2023, Pakistan made another step forward by removing the death penalty from the related provisions of Section 9 of the CNSA in its federal amendment. The Government of Pakistan (2023) and Human Rights Watch (2017) report this.

A comparative lesson thus is not that Pakistan should emulate another jurisdiction, but that effective drug control does not necessarily need the highest possible punishment for each category of drug offender.

Proportionality as the Fundamental Reform Principle.

The need of the hour is to make proportionality the basis of Pakistan's narcotics sentencing policy. Proportionality does not equate with “leniency.” It must be proportionate to the seriousness of the conduct, the culpability of the offender and legitimate criminal-justice goals. The number of those involved should continue to be a factor, but not always the only factor in determining guilt. Other factors that may be relevant include role, intention, financial gain, coercion, dependency, prior convictions, and organizational involvement. (Frase, 2005; Tonry, 2016).

The experience of Ghulam Murtaza and Ameer Zeb bears testimony to the need of consensus and prudential evaluation of a judge in narcotics cases. But, the statutory framework for 2022 onwards needs to be looked at in the present times and not earlier sentencing principles applied mechanically. A future system should aim to balance the regulatory requirements and individual evaluation in line with legislative constraints. According to the documents, the government had made no progress in the case of Ghulam Murtaza & another v. (Government of Pakistan, 2022). The State, PLD 2009 Lahore 362; Ameer Zeb v. The State, PLD 2012 SC 380).

A Comprehensive Reform Agenda for Pakistan.

A successful reform plan needs to focus on four goals that are commonly confused to be satisfied by the same punishment system: suppression of organized trafficking, deterrence of serious crime, treatment of drug-use disorders, and long-term public safety. These goals are not mutually exclusive but will need different policy supports. (Nagin, 2013; WHO & UNODC, 2018, 2020).

Structured Judicial Discretion

Structured judicial discretion needs to be enhanced within the parameters set by law in Pakistan. Sentencing opportunities must take into account aggravating and mitigating factors and where legally permitted, allow courts to account for real differences in culpability. Factors that aggravate the situation include leadership in trafficking, significant monetary gain, reoccurring high level trafficking, violence, and transnational coordination. Factors that mitigate are little involvement, coercion or duress, no prior convictions, little money gained and drug use disorders if lawfully applicable. (Frase, 2005; Tonry, 2009, 2016).

Offender Roles Differentiation

There is a need to differentiate between organizers and financiers, commercial distributors, couriers, street-level sellers and anyone whose drug offences are more directly related to drug use disorders. The classification should be made on the basis of evidence of role, intent, benefit, organizational relationship and risk – instead of just labels. (Caulkins & Chandler, 2006; Kleiman, 1992).

Increasing Access to Treatment and Care

Prisons and community settings should allow for the identification of drug-use disorders and continuity of care post-release along with access to evidence-based treatment. Measurable indicators for the treatment programmes should include measurable indicators of retention, decreased relapse, health outcomes, social functioning and reoffending. (UNODC, 2020; WHO, 2024).

Federal-Provincial Coordination

There needs to be mechanisms for coordination between federal and provincial institutions in respect of data, investigation, treatment, rehabilitation and enforcement. Federal institutions may have special concern for international trafficking, border control and large-scale, interprovincial networks and provincial institutions have special concerns related to local enforcement, prevention, treatment and rehabilitation. (Government of Pakistan, 1973; UNODC, 2023).

Outcome-Based Evaluation

Narcotics policy must be based not only on the severity of the punishment, but on the results obtained. Possible indicators include the disruption of organized trafficking networks; the decrease in repeat offending; the completion of treatment; employment after treatment; drug-related deaths; relapses; public confidence in the justice system and overcrowding in prisons. (Nagin, 2013; WHO, 2024; WHO & UNODC, 2020).

Conclusion

The ongoing drug-control policy in Pakistan still seems to be in a conflict with punitive criminological, public health, Islamic jurisprudence, constitutional values and international human-rights standards. The CNSA presents the key federal sentencing structure for possession, trafficking, transportation and related offences and quantity has been a significant factor in sentencing. The amendments in 2022 and 2023 represent major changes to the federal sentencing structure: the 2022 amendment greatly expanded and distinguished penalties for certain categories of narcotics offences while the 2023 amendment eliminated death as a prescribed punishment in the relevant provisions of Section 9. (Government of Pakistan, 1997, 2022, 2023).

The abolition of the death penalty is a step in the right direction, but it does not make the sentencing structure proportionate without more. The ongoing difficulty is to make sure that no one ends up paying for what they have done by serving incredibly harsh sentences without serious consideration being given to their culpability. We thus need an approach which is differentiated: Proportionate

sanctions for serious organized trafficking and evidence-based treatment and rehabilitation for those whose act of trafficking is closely associated with drug-use disorders in Pakistan. This approach should include structured judicial discretion, enhanced enforcement certainty, coordination among the federal and provincial levels, and systematic evaluation. Such a system will be more compatible with deterrence, public safety, rehabilitation, constitutional values, Islamic legal system and Pakistan's international obligations to respect human rights.

Recommendations

- Adopt proportionality-based sentencing. Consider revisiting narcotics sentencing provisions to retain and consider quantity as a relevant factor while adding other factors that may be relevant under the law as additional measures of culpability where appropriate.
- Increase judicial discretion in a structured manner. Establish clear principles for statutory sentencing and ensure that sentences are made on the basis of reasoned judgments made by judges, and subject to limits and appeal by law.
- Differentiate offender roles. Differentiate between organizers, funders, commercial distributors, couriers, low-level sellers, and those whose offences have a primary association with drug-use disorder(s).
- Increase the level of enforcement and the certainty of it. Improve investigation, intelligence sharing, forensic capability, prosecution, border monitoring and financial investigation.
- Pursue the trafficking networks at the upper levels. Focus more on those who organize, finance, facilitate and are repeat high level traffickers.
- Expand evidence-based treatment. Increase access to medically appropriate and psycho-social treatment for persons with drug-use disorders.
- Develop prison-based treatment. Ensure screening, counselling, treatment and post-release referral to prevent unnecessary disruption of recovery during incarceration.
- Expand community rehabilitation. For those lower-level offenders that can be treated, in a supervised environment, in a vocational sense, and socially reintegrated, offer these services where legally allowable.
- Strengthen federal-provincial coordination. Establish a common set of standards for data collection, investigation, treatment, rehabilitation and enforcement, respecting constitutional responsibilities.
- Formulate a national sentencing policy. Make the use of legality, proportionality, culpability, consistency, deterrence, rehabilitation, and public safety the bases for sentencing narcotics.
- Strengthen professional training. Educate judges, prosecutors, police, prison officers and other stakeholders on narcotics evidence, sentencing, drug addiction, drug markets, human rights and rehabilitation.
- Access to legal assistance. Improve access to quality legal counsel, especially for those accused persons with limited economic means.
- Constructively implement Islamic jurisprudence. Justify a differentiated and context-sensitive policy based on the principles of ta'zīr, prevention of harm, maqāṣid al-sharī'ah and public welfare.
- Develop reliable national evidence. Implement regular data gathering of drug use, arrest and conviction, sentencing, treatment, recidivism and drug deaths.
- Routinely review narcotics legislation. Evaluate the proportionality, effectiveness, consistency and constitutionality of federal and provincial drug laws.

- Measure public-safety outcomes. Consider policy effectiveness by looking at the following indicators: trafficking disruption, recidivism, treatment outcomes, community safety and public confidence not just imprisonment rates.

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