

The background features a decorative graphic consisting of several overlapping circles in various shades of blue. Two thin, light blue lines intersect at the top left and extend diagonally across the page. The circles are arranged in a way that they appear to be floating or connected by these lines, creating a modern, abstract design.

# **Literature Review of Drug related laws and policies in Pakistan**

Society for Sustainable Development

A comprehensive review of the drug laws, policies and other studies related to drug abuse, the implementation of laws and on ground situation in Pakistan

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## Introduction

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The Baseline Study contained a literature survey, focusing on providing a comprehensive literature review to contextualize Drug Users within Pakistan legislative and policy framework, the international drug policy and relevant literature. While there is a dearth of literature available on Drugs control and policies and, the review has attempted to be as comprehensive as possible.

## International literature

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Narcotics control or drug control movement initiates from a desire to save human being from harm. The international community, had an apprehension about the effects of narcotics on public health, therefore they were motivated to prohibit a series of substances and establish measures to eliminate their production, distribution and consumption. The primary phrase of the first UN treaty on drug control, 1961, speaks of a concern for the health and well-being of humanity.

Since then, the illegal drug economy has grown at an exponential rate, achieving certain market stability around the beginning of the nineteen nineties. The strategy to combat drugs led to a large-scale war, with extreme actions such as military operations against small farmers of illegal plants, chemical fumigation of illegal drug crops, wholesale imprisonment of users and small distributors, and even the death penalty for those who break the law relating to drugs in some countries. The prohibition of illegal drugs places the markets of this lucrative trade in the hands of criminal organizations, and creates enormous illegal funds which stimulate armed conflicts throughout the world.

In terms of measures to control psychoactive substances, there is currently a wide diversity worldwide, and also vast differences in the administrative and criminal sanctions applied in each country. The UN conventions establish global norms in this respect: The Single Convention of 1961, with its lists of narcotics, the Convention on Psychotropic Substances; 1971, the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, with its lists of precursors; and more recently, the WHO Framework Convention on Tobacco Control, 2003.

The norms established by the United Nations have little logic, and have been shown to be full of inconsistencies from the very outset.

In 1998, under the slogan 'A Drug Free World, We Can Do It!' the United Nations declared a set of goals including the elimination or significant reduction of the illicit cultivation of the coca bush, the cannabis plant and the opium poppy by the year 2008.

## Illicit drug use – facts and figures

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- The global drug market is worth around \$320 billion.<sup>i</sup>
- An estimated 208 million people use illicit drugs each year.<sup>ii</sup>

- Approximately 165.8 million people use cannabis which represents 3.9% of the global population aged 15-64.<sup>iii</sup>
- Cannabis use in the United States and New Zealand is higher than in any other country (42% - lifetime use). 16% of US citizens have used cocaine at some point in their lives.<sup>iv</sup>
- There are an estimated 13.2 million injecting drug users worldwide.<sup>v</sup>
- 158 countries and territories have reported injecting drug use.<sup>vi</sup>
- The most commonly injected drugs around the world are heroin, cocaine and amphetamine-type stimulants.<sup>vii</sup>

## Cultivation and production of illicit drugs

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- Since 1998, opium production has increased 102%<sup>viii</sup>. Afghanistan produced 92% of the world's opium in 2007. The total area under opium poppy cultivation in Afghanistan covers 193, 00 hectares.<sup>ix</sup> Previously, most opium was produced in the 'Golden Triangle' of Laos, Burma, and Thailand.
- There has been an increase of 20% in coca production since 1998<sup>x</sup>. Around 90% of world's cocaine is produced in Latin America.

## Illicit drugs and law enforcement

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- In February 2003, the prime minister of Thailand launched a war on drugs. Over 2,500 extrajudicial killings of alleged drug dealers took place.<sup>xi</sup>
- The United States has incarcerated the largest number of people on drugs-related charges. In 2005, 573,354 people were in custody on drugs charges (state, federal and local).<sup>xii</sup>
- In the United States, black people are incarcerated at much higher rates than whites. African-American men are 12 times more likely to be in prison for a drugs-related offence than white men.<sup>xiii</sup> However, surveys suggest that whites and blacks use drugs at similar rates (an estimated 49 percent of whites and 42.9 percent of blacks age 12 or older have used illicit drugs in their lifetime)<sup>xiv</sup>.
- In several countries of the former Soviet Union, police are expected to fulfill an arrest quota. Arresting drug users for possessing syringes or planting drugs on known drug users is an easy way to do this.<sup>xv</sup>
- More than thirty countries retain capital punishment for drugs. The majority of these countries are in the Middle East, North Africa and the Asia-Pacific regions.<sup>xvi</sup> In Malaysia between July 2004 and July 2005, 36 out of 52 cases of capital punishment were for drug trafficking.<sup>xvii</sup>

## The use of the death penalty for drug offences<sup>xviii</sup>

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(A Violation of International Human Rights Law)

In 1985, the death penalty for drug offences was in force in twenty-two countries. Ten years later, in 1995, this number had increased to twenty-six. By the end of 2000, at least thirty-four states had enacted legislation providing for capital punishment for drug crimes, the majority of

these being in the Middle East, North Africa and Asia Pacific regions. In a number of these countries, certain drug offences carry a mandatory sentence of death.

The number of countries actually carrying out executions, and the number of people put to death annually for drug convictions, are more difficult figures to calculate. It is clear that not all of these countries are implementing the death sentences provided for in their legislation. Nevertheless, it is equally clear that a significant number of executions for drug offences take place each year.

A review of various reports from UN agencies, non-governmental organisations and media outlets shows that in recent years executions for drug offences have been carried out in countries including China, Egypt, Indonesia, Iran, Kuwait, Malaysia, Saudi Arabia, Singapore, Thailand and Viet Nam. Even in countries that are not actively executing drug offenders, death sentences for drug-related crimes continue to be pronounced.

According to Amnesty International, the death penalty has been abolished in law or practice in 133 states. This figure includes countries that are abolitionist for all crimes, abolitionist for ordinary crimes (offences committed during peacetime) and de facto abolitionist (those that have not carried out an execution in the past ten years despite the existence of capital punishment in their statutes). Of the sixty-four 'retentionist' states that continue to use capital punishment, half have legislation applying the death penalty for drug-related offences. In contrast to the international trend towards the abolition of capital punishment, the number of countries applying the death penalty to drug offenders has increased over the past twenty years.

Under the International Covenant on Civil and Political Rights (ICCPR), the use of capital punishment, while not prohibited, is restricted in several ways. One of the key restrictions is contained in Article 6(2), which states that the penalty of death may only be applied for the 'most serious crimes'. Over the past twenty-five years, human rights bodies have interpreted Article 6(2) in a manner that limits the number and types of offences for which a penalty of death is allowable under international human rights law.

However, many retentionist states continue to argue that drug crimes fall under the umbrella of 'most serious crimes' and claim that the use of capital punishment for drug offences is justified.

## HIV prevalence and injecting drug use

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- HIV rates among all prisoners are higher than among the total population, e.g. Lithuania – 0.2% in total population with 9.75% in prisons, Malaysia – 0.5% and 4%, Ukraine – 1.4% and 14%.<sup>xix</sup>
- 83% of all people registered HIV-positive in the Russian Federation in 2007 were reported to have been infected via injecting drug use.<sup>xx</sup>
- Up to 10% of all HIV infections occur through injecting drug use. One third of infections outside Africa are due to injecting drug use. Globally, there may be up to 3.3 million people who inject drugs that are living with HIV.<sup>xxi</sup>
- In nine countries, over 40% of IDUs are HIV-positive: Estonia, Ukraine, Burma, Indonesia, Thailand, Nepal, Argentina, Brazil, and Kenya.<sup>xxii</sup>

## Drug dependence and treatment

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- The disorder of opioid dependence is represented in the International Classification of Disease of the World Health Organization<sup>xxiii</sup>. It is a chronic or long-term and relapsing disorder<sup>xxiv</sup>.
- Methadone, an synthetic opiate, has been used since the 1960s to treat drug dependence.<sup>xxv</sup> Regular use of substitution therapy has been associated with decreased injecting drug use, decreased criminal activity increased retention in treatment for chemical dependence, increased adherence to HIV medication, improved family relations, and successful return to employment.<sup>xxvi</sup>
- The World Health Organization added methadone and buprenorphine to their Model List of Essential Medicines in 2005.
- Methadone remains illegal in several countries, including in some countries with a high HIV prevalence among injecting drug users, e.g. Russia, Armenia and Tajikistan.
- Treatment is more cost-effective than sending a drug user to prison.<sup>xxvii</sup> Injecting drug users leaving prison account for a substantial number of fatal overdoses.<sup>xxviii</sup>

## Harm Reduction

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- ‘Harm reduction’ is a philosophy whose central aim is to reduce the harms of drug use. Two major harm reduction interventions are substitution therapy (methadone, buprenorphine, and, in some cases, heroin), needle or syringe exchange.
- The first needle exchange program was set up in the Netherlands in 1984. By providing clean needles and the chance to dispose of dirty ones, the chances of transmitting bloodborne diseases, such as HIV or hepatitis C, are dramatically reduced.<sup>xxix</sup>
- By 2008, at least 77 countries or territories had implemented/tolerated some form of harm reduction intervention - 63 had substitution treatment.<sup>xxx</sup>

## The Way Ahead

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- **Respect for human rights** - *‘No one should be stigmatized or discriminated against because of their dependence on drugs’* United Nations Secretary-General Ban Ki-moon, Message on the International Day against Drug Abuse and Illicit Trafficking, 26 June 2008.<sup>xxxi</sup>
- **Principle of proportionality** - Any measures taken must be proportionate. In other words, they must be no more than is necessary to achieve a legitimate aim and the penalty should fit the crime.<sup>xxxii</sup>
- **Treatment, not punishment** - If a drug user has committed no crime other than the possession of an illicit substance, the alternative of treatment, education, aftercare, rehabilitation or social reintegration (provided for in the 1988 convention, article 3, para 4) should be used instead of imprisonment.
- **Increased access to harm reduction services** - Access to harm reduction services is needed in all countries where injecting drug use takes place in order to curb the HIV epidemic and reduce the harms and levels of drug-taking.

- **Alternative development** - Realistic alternatives must be provided for farmers of illicit crops which allow them to draw in a reasonable income which include not only alternative crops, but also alternative forms of work, democratic education and the joint search for other solutions.<sup>xxxiii</sup>
- **‘Nothing about us without us’**- As HIV positive people are recognized as being part of the solution to the global HIV problem, drug users are similarly part of the solution for reducing drug-related risks.

## Pakistan: Analysis

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Pakistan is the second largest country in the South Asian region with an estimated population of 172.8 million<sup>1</sup>. Like other countries in the South Asian region, it has almost the same demographic and health profile, characterized by high rates of infant and maternal mortality, low levels of literacy and poor access to health care. Additionally, already crunched health budgets are being stretched to deal with a growing problem of drug dependency and injecting drug use and more recently the HIV/AIDS epidemic.

## Drug use in Pakistan and HIV & AIDS Risk<sup>2</sup>

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Pakistan’s geographic location next to Afghanistan, the world’s largest producer of illicit opium, places the country in a vulnerable position in terms of drug trafficking as well as drug abuse. Patterns of illicit drug production, distribution and abuse change as a result of social, economic and political developments. Such changes underscore the necessity of analysis and research on drug trends in the country and region as a crucial first step in terms of policy making and drug interdiction efforts.<sup>xxxiv</sup>

The fact of drug use is well known to the sub-continent: use of raw opium was an established socio-cultural practice. Till the 1960s, cannabis smoking was confined to the lower economic segments of the population and addiction was not reportedly seen as a social or public health threat.<sup>xxxv</sup> The 1970s saw the introduction of cannabis use among urban youth.<sup>xxxvi</sup> Like the other countries in the region, Pakistan witnessed increased consumption and dependence on heroin in the 1980s, which was inhaled as heated fumes or smoked by mixing with cigarette tobacco.<sup>xxxvii</sup> By the mid-1990s, over a million heroin dependent users were reported in Pakistan.<sup>xxxviii</sup> The late 1990s saw street-based drug users in the cosmopolitan cities of Pakistan, especially Karachi and Lahore, inject heroin. Injection of drug cocktails (mixture of pharmaceutical drugs available over the counter) was also reported around the same time.<sup>xxxix</sup> The shift from smoking to injecting heroin and other pharmaceuticals has been attributed to the high cost and difficulty in obtaining heroin (an illicit substance) as compared to the relatively easy availability of legal drugs.<sup>xi</sup>

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<sup>1</sup> Population Reference Bureau: 2008 Data Sheet

<sup>2</sup> Legal and Policy Concerns Related to IDU Harm Reduction in SAARC Countries

Inhalation of solvents such as adhesive glue, paints, thinner/correction fluid for their psychoactive effects has also been reported as common among street children living in urban poverty.<sup>xli</sup> Although no injecting drug use was reported among those street children dependent on drugs, a research study conducted in the four cities of Lahore, Quetta, Karachi and Peshawar found street children engaging in risky sexual practices under the influence of drugs.<sup>xlii</sup> Solvent abuse among young, vulnerable populations is emerging as a serious challenge in the field of drug prevention, education and treatment.

According to the National Drug Abuse Assessment Study conducted by the government in association with UNODC in 2000/01, there are an alarming 500,000 chronic heroin users, including drug injectors (15% or 60,000) in Pakistan.<sup>xliii</sup>

## Injecting Drug Use (IDU)

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Injection drug users (IDUs) in Pakistan are posing a serious risk to the country's healthcare system. The prevalence of opioid use in the country is estimated at around 628,000.<sup>xliv</sup> Out of these around 484,000 (77%) are heroin users.<sup>xlv</sup> There is also an increased shift towards injecting drug use among drug addicts in the country.<sup>xlvi</sup> The problems associated with heroin use in Pakistan are aggravated due to the country's widespread porous border with Afghanistan, one of largest opium producers.<sup>xlvii</sup> However, fluctuations in heroin availability, purity and price have led many heroin addicts to change over to injecting drug use.<sup>xlviii</sup> Other studies have also identified factors that have been associated with injecting synthetic drugs. In Quetta and Lahore in 2003, factors such as using drugs in groups or sharing snorting/chasing tools were associated with recent onset of injections.<sup>xlix</sup> Two different case control studies in Lahore and Larkana in 2003 have assessed correlates of injection drugs use and HIV transmission. They have identified risk factors such as presence of an IDU friend, reuse of syringe, cost of current drug and poly drug use.<sup>i, ii</sup> IDUs are using a combination of products depending upon its availability. Most common narcotics used besides heroin are pharmaceutical combination of Diazepam, Lorazepam and Pheniramine.<sup>iii</sup>

The prevalence of HIV among IDUs suggests alarm. Family Health International (FHI) sponsored a cross sectional study in 2002-2003 which indicated 23% seroprevalence in Karachi,<sup>iiii</sup> the largest metropolis. Since 2004 the Canadian International Development Agency (CIDA) has been supporting HIV/AIDS Surveillance Project (HASP) which works closely with the National and Provincial AIDS Control Programmes of the country.

## HIV/AIDS

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The HIV epidemic in Pakistan is presently concentrated in the Injecting Drug Users (IDUs) population and has reached upto 51% in certain urban areas. There is also indication of rising infections among the MSW (Hijras) population which is more visible in cities that have had an established IDU epidemic since 2-3 yrs. This is an alarming situation and a clear signal for urgent and focused actions in reducing rapid spillover of infection from these core groups to others and thereby to the general population.<sup>liv</sup>

Pakistan is at a crucial juncture vis-à-vis HIV/AIDS prevention and control, especially among groups with risky sexual and injection practices.



### Overview of the Legal System

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Pakistan is a federal republic with four provinces namely – Punjab, Sindh, Balochistan and the

North West Frontier Province (NWFP), along with the national capital territory of Islamabad and the territory of Federally Administered Tribal Areas (FATA). The areas under FATA enjoy considerable administrative autonomy; procedural law based on local tribal custom finds its application in the administration of justice in FATA. Some federal and provincial laws have, therefore, not been extended to these areas.

Pakistan is a parliamentary democracy and legislative powers are vested with the Parliament and with the Provincial Assemblies.<sup>lv</sup> The bicameral Parliament – Majlis-I-Shoora – consists of the Senate and the National Assembly. The Senate, which is the permanent house, has representatives elected from the provincial assemblies while members of the National Assembly are elected through parliamentary elections every four years. Parliamentary democracy has, however, on several occasions, given way to other forms of government including military and presidential governments.

The President, who is elected for a five-year term, heads the executive branch of the State.<sup>lvi</sup> The Prime Minister or the Head of the government is appointed by the President from amongst the members of the National Assembly,<sup>lvii</sup> and exercises executive powers for the federal government along with a Cabinet of Ministers. The President enjoys wide ranging powers over the elected government and political and legal developments in the recent past have established the Presidential office as the supreme decision-making/authoritative body in the country.

### Constitution

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The Constitution of the Islamic Republic of Pakistan has been suspended and restored several times over since its adoption in 1973. Now once again the Constitution has been restored with some amendments after the restoration of democracy in 2008.

The Preamble to the Constitution proclaims Islamic principles of social justice and declares respect for fundamental rights including equality of status, opportunity and protection of law<sup>lviii</sup> within an egalitarian socio-economic order. The fundamental rights chapter embodied in the Constitution guarantees the preservation of life, liberty, body and property of each person.<sup>lix</sup> The state cannot prevent or hinder a person from doing something not prohibited under law and cannot compel a person to do something that is not required under law.<sup>lx</sup> Other claims against the State that are protected under the Constitution include the right to movement, association and peaceful assembly subject to reasonable restrictions imposed by law for preservation of sovereignty, integrity, public order and morality.<sup>lxi</sup> Freedom of speech and expression, including freedom of the press, though protected, can be restricted through law for upholding the glory of Islam for safeguarding national security, public order, morality and for preventing the commission and incitement of offence.<sup>lxii</sup>

Constitutional protections afforded to persons within the criminal justice system include the right to legal representation and defence<sup>lxiii</sup> and procedural safeguards during detention and arrest.<sup>lxiv</sup>

The same, however, can be waived in case of preventive detention.<sup>lxv</sup> Among other safeguards like the right against self-incrimination and double jeopardy,<sup>lxvi</sup> the Constitution prohibits retroactive application of penal law (ex post facto penal law),<sup>lxvii</sup> violation of dignity and privacy<sup>lxviii</sup> and torture to exact evidence.<sup>lxix</sup>

The Constitution seeks to protect the rights of religious minorities to preserve, practice and profess their religion<sup>lxx</sup> within a predominantly Islamic polity. Sex discrimination is expressly prohibited although the state is authorized to take affirmative action to further gender equality and the rights of women.<sup>lxxi</sup>

The State is forbidden from making laws that violate or abridge fundamental rights recognized by the Constitution.<sup>lxxii</sup> At the same time, the Constitution itself provides for the suspension of these rights<sup>lxxiii</sup> during the invocation of an emergency.<sup>lxxiv</sup> Again, fundamental rights have been inoperative during periods of suspension of the Constitution.

In addition to guaranteeing fundamental rights, the Constitution in Chapter 2 enunciates principles of policy for the State and its agencies to observe. These include, inter alia, measures to secure for all citizens basic amenities, livelihood and social security. The application of these principles is subject to availability of resources.<sup>lxxv</sup>

Further, no action can be instituted against the state for non-compliance, as these principles are nonjusticiable.<sup>lxxvi</sup>

## Religious law

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Islamic law or the Shariat finds its application in the substantive as well as the procedural aspects of the law. The Constitution itself requires all laws to be brought in conformity with Islamic injunctions.<sup>lxxvii</sup>

Islamization of law is said to have formally started in 1979 with the introduction of a new legal code and the setting up of the Federal Shariat Court to hear appeals from cases arising from the new code. The promulgation of the Prohibition (Enforcement of Hadd) Order IV of 1979 was seen as an attempt to harmonise penal provisions with Islamic injunctions.

The Hadd Order contains four ordinances dealing with offences against (1) property, (2) adultery (zina) and rape (zina-bil-jabr), (3) qazf (false accusation of zina) and (4) prohibition of intoxicants. These ordinances define offences, lay down procedure and evidentiary standards and prescribe penalties with respect to the above acts in accordance with Islamic concepts and principles. Under these ordinances, an offender is held liable to hadd<sup>lxxviii</sup> if the offence is proved with strict evidentiary requirements<sup>lxxix</sup> or to tazir<sup>lxxx</sup> if the Court is satisfied that the offence stands proved on the basis of proof on record but is not in accordance with strict evidentiary standards as required for hadd.

Punishments for offences liable to hadd are more stringent as compared to punishment for offences liable to tazir. Punishments provided under the ordinances include flogging,<sup>lxxxii</sup> imprisonment and fines and stoning to death, or capital punishment for more serious offences.

Further, execution of hadd penalties requires conviction to be confirmed by a Court of appeal,<sup>lxxxii</sup> the highest appellate forum being the Federal Shariat Court.

Hudood convictions have been rare because of the difficulty in satisfying evidentiary norms. It is believed that the Hadd order was intended to create a normative code for Muslims rather than influence the penal system.<sup>lxxxiii</sup>

The Enforcement of Shari'ah Act, 1991<sup>lxxxiv</sup> was aimed at instilling Islamic values into the legislative and judicial regime. The Act proclaims the supremacy of injunctions of Islam as laid in the Quran and Sunnah over other laws<sup>lxxxv</sup> and requires statutes to be interpreted in conformity with Islamic provisions.<sup>lxxxvi</sup>

The Act orders all Muslim citizens to observe the Shari'at and act accordingly.<sup>lxxxvii</sup> Among other declaratory provisions, the Act directs the state to introduce the Shariat in education and teaching<sup>lxxxviii</sup>, adopt Islamic principles in governance<sup>lxxxix</sup>, promote Islamic values through mass media<sup>xc</sup> and enact a range of legislative and administrative measures to ensure compliance with the Shari'at.<sup>xcii</sup>

## Courts

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The judiciary, which comprises the district Courts exercising civil and criminal jurisdiction, special Courts and tribunals, High Courts and the Supreme Court, is responsible for the enforcement of legal and fundamental rights<sup>xciii</sup>. At the district level, civil judges and the Court of District Judge decide civil cases. Criminal cases are triable by Courts of Magistrates or the Sessions Court depending on the offence and the punishment.<sup>xciii</sup> Special Courts and tribunals have been set up under various statutes to hear specialized matters pertaining to labour, traffic, insurance, narcotics etc.

Appeals against orders of civil and criminal Courts lie before the High Court of that province. The High Courts exercise original jurisdiction in matters delineated in the Constitution, which include cases involving enforcement of fundamental rights<sup>xciv</sup> and under various statutes. The High Courts have regulatory and supervisory powers over subordinate civil and criminal Courts in their territorial jurisdiction.

The Supreme Court, seated at Islamabad is the highest judicial authority. The Court exercises original<sup>xcv</sup>, appellate<sup>xcvi</sup> and advisory jurisdiction.<sup>xcvii</sup>

The Supreme Court has the power to make any appropriate order for the enforcement of fundamental rights.<sup>xcviii</sup> Decisions of the Supreme Court are final and binding.<sup>xcix</sup>

The Federal Shariat Court adjudicates over and hears appeals from cases involving the Enforcement of Hadd Order. The Court may examine and decide whether any law or provision is contrary to Islamic injunctions as contained in the Quran and the Sunnah. Laws declared to be inconsistent with Islam are required to be amended.

Another institution responsible for checking maladministration in government bodies is the Ombudsman or Wafaqi Mohtasib.<sup>c</sup> The Office of the Mohtasib is based on the Islamic concept of 'hisab' or accountability in public dealings. The Ombudsman investigates complaints made by aggrieved individuals against acts or omissions of public agencies and has the power to direct

remedial measures, order disciplinary and award compensation. Procedural powers exercised by the Ombudsman are similar to powers conferred on civil Courts.<sup>ci</sup>

Overall, the legal system in Pakistan is based on English common law, with provisions to accommodate Islamic law. The criminal legal system is administered through the Pakistan Penal Code 1860, the Code of Criminal Procedure, 1898, in addition to other criminal acts, ordinances and the Hadd provisions. The law of evidence was revised in 1984 to accommodate Islamic standards and introduced as the Qanun- E- Shahadat Order, 1984.<sup>cii</sup>

## Drug Use and HIV/AIDS Harm Reduction Law

### General penal provisions

Aiding and instigating the commission of an offence is punishable<sup>ciii</sup> under the Penal Code as also criminal conspiracy.<sup>civ</sup> The offence abetted may not only be punishable under the Penal Code but under any other special or local law.<sup>cv</sup>

Sexual offences are punishable under religious law. The offence of Zina<sup>cvi</sup> ordinance, VII, 1979 makes willful sexual intercourse between a man and a woman, not married to each other, punishable.

Like under other Hudood ordinances, Zina is liable to Hadd<sup>cvii</sup> or tazir. Non-consensual penetrative sex is punishable as Zina-Bil-Jabr.<sup>cviii</sup> Islamic legal provisions thus render all consensual adult sex outside marriage – whether pre-marital, extramarital and/or paid, illegal. Zina offences are gender neutral i.e. women are also liable to punishment.

### Drug use as an offence

According to Islamic legal scholars, prohibition on alcohol and other mind altering substances dates back to the time of the Prophet, who declared sale, serving and consumption of Khamr (literally referring to fermented juice of grapes, barley, dates or similar things and includes all intoxicants whether liquid, solid or powder) to be haram (prohibited).<sup>cix</sup> Islamic jurists maintain that the Quran forbids intoxicants because their consumption impairs reasoning, intellect and decision-making and leads one towards an unethical and essentially un-Islamic way of life.

Consequentially, a person using cannabis, hashish or similar substances was considered 'kafir' or one who loses faith.<sup>cx</sup>

Religious condemnation of alcohol and drugs is codified in the Hudood Ordinance on Prohibition.<sup>cxii</sup> The Order prohibits intoxicants,<sup>cxii</sup> including sale, import, export, trafficking and possession. Drinking is illegal and attracts punishments ordained by Shariat (Hadd)<sup>cxiii</sup> or by Court (Tazir).<sup>cxiv</sup> Drinking not only means consumption of alcohol but has been broadly defined to mean intentionally taking an intoxicant by any means whatsoever, whether such taking causes intoxication.<sup>cxv</sup> Drug use, orally or through intravenous injection, is prohibited and punishable under the Hadd Order.

Repeat offenders face additional jail sentence.<sup>cxvi</sup> Attempt to commit an offence under the Order is punishable.<sup>cxvii</sup> Punishment for abetment of an offence under the Order is to be awarded by the Court in accordance with Penal Code provisions.<sup>cxviii</sup>

This raises questions about the legality of existing needle syringe exchange programs with IDUs in Pakistan, which could be construed as abetment of offence under Section 6 of Prohibition (Enforcement of Hadd) Order 1979.

The Order provides for the appointment of a Prohibition Officer by provincial governments, to exercise administrative and investigative powers under the same.<sup>cxix</sup> Rule-making powers are delegated to provincial governments.<sup>cxx</sup> Among other things, rules may be made for issuing licenses for medicinal, scientific and industrial use of intoxicants. In what appears to be recognition of drug maintenance therapy, the Prohibition (Enforcement of Hadd) Rules 1981, permit the supply of opium tablets to a person in respect of any institution for medicinal purposes.<sup>cxxi</sup> Further, opium may be sold to an addict on presentation of a prescription card issued by a medical officer stating that the addict will suffer from serious illness causing apprehension of death.<sup>cxii</sup> The Shariat itself tolerates the use of a prohibited substance in order to save life.<sup>cxiii</sup>

Such provisions provide scope for the recognition and inclusion of drug substitution/maintenance within the exception carved out in law for medical use of prohibited drugs.

The Control of Narcotic Substances Act (CNSA), 1997 is the secular legislation on narcotics. It was introduced in order to:

- Control production, processing and trafficking of narcotics and;
- Regulate treatment and rehabilitation of drug users

The Anti Narcotics Force (ANF) Act, 1997 supplements the CNSA by providing for the establishment of a force for undertaking and overseeing investigation of narcotics crime. The Control of Narcotic Substances (Regulations of Drugs of Abuse, Controlled Chemicals, Equipment and Material)<sup>cxiv</sup> and Disposal of Vehicles and other articles (Involved in Narcotic Cases) Rules were introduced in 2001 to give effect to regulatory provisions under the CNSA.

The CNSA and the ANF legislations have been extended to FATA, other provincially administered tribal areas, Azad Jammu and Kashmir and Northern Areas to strengthen law enforcement in areas with heavy narcotics activity.<sup>cxv</sup>

## Nature and classification of prohibited substances

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The CNSA deals with illicit narcotic and psychotropic substances. Narcotic drugs is defined to include coca leaf, cannabis, opium, poppy straw, heroin and other manufactured drugs.<sup>cxvi</sup>

Psychotropic substances<sup>cxvii</sup> have been enlisted in the Schedule to the CNSA, which expressly mentions buprenorphine, a commonly used pharmacological drug in oral maintenance therapy for injecting users. The CNSA also defines precursor chemicals as controlled substances.<sup>cxviii</sup>

## Offences and penalties

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The CNSA prohibits the following activities in relation to narcotics and psychotropic substances:

- Cultivation with the exception of medical, scientific or industrial purposes and with a license<sup>cxxix</sup>
- Production
- Manufacture<sup>cxxxi</sup>
- Extraction
- Preparation
- Possession
- Sale and purchase

Distribution and delivery except for medical, scientific and industrial purposes in accordance with prescribed conditions<sup>cxixi</sup> Import or Export<sup>cxixii</sup>

Trafficking or financing trafficking<sup>cxixiii</sup> Owning, managing and operating premises, equipment for manufacture or production except with a license<sup>cxixiv</sup>

Possession, use etc of assets acquired from commission of offences.<sup>cxixv</sup> Importantly, use or consumption of narcotics and/or psychotropic drugs is not an offence under the CNSA.<sup>cxixvi</sup> Possession of prohibited substances, which is another activity that drug users may be arrested for, is, however, punishable. Judicial interpretation suggests that possession has been used in a wider sense so as to include transport, despatch and delivery<sup>cxixvii</sup> thereby implying that the offence is targeted primarily at traffickers and not drug users.

Penalties for the above offences depend only on the quantity found.<sup>cxixviii</sup> Broadly, there are three levels of penalties. Firstly, if the quantity of illicit substance found is less than 100 grams, the maximum punishment is 2 years imprisonment or fine or both.<sup>cxixix</sup> Users found with lesser quantities for personal consumption would be liable under this provision. A second category of penal measures i.e. imprisonment extending up to seven years and fine for quantities above hundred grams but not exceeding one kilogram.<sup>cxli</sup> The death penalty or life imprisonment in addition to fine up to one million rupees can be imposed in case the quantities involved exceed the above.<sup>cxlii</sup>

There is no distinction in penalties for soft and hard drugs. A person found with 100 grams of ganja will be awarded the same punishment as someone carrying 100 grams of heroin, even though heroin is far more hazardous than cannabis.

The following acts if committed in relation to any of the offences delineated under the Act, within or outside Pakistan,<sup>cxliii</sup> are also punishable with the same punishment as that provided for commission of the offence.<sup>cxliiii</sup>

- Participation in
- Association with
- Conspiracy to commit
- Attempt to commit
- Aid
- Abetment
- Facilitation
- Incitement

- Inducement
- Counsel the commission

Since the CNSA does not punish drug use per se, provision of drug injection paraphernalia does not amount to abetment and hence is not objectionable under the Act. Methadone maintenance or oral buprenorphine substitution programs, since they involve giving/distributing illicit drugs, would be in contravention of the CNSA, unless such therapy is recognized within the exception of supply for medical treatment.

## Powers and procedures

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The CNSA directs search, investigation and arrests to be made with a warrant issued by a Special Court<sup>cxliiv</sup> or without a warrant in exceptional situations<sup>cxliv</sup> after recording reasons.<sup>cxlvi</sup> In exercise of powers conferred under the Act, investigating officers can:

- Enter buildings or premises<sup>cxlvii</sup>
- Seize illicit substances<sup>cxlviii</sup>
- Confiscate materials, articles and documents, which may furnish evidence of commission of offence<sup>cxlix</sup>
- Detain, search and arrest persons suspected of committing an offence<sup>cl</sup>

Similar powers can be exercised with respect to offences committed in public places including shops and hotels<sup>cli</sup> and in conveyances.<sup>clii</sup>

Additionally, enforcement officials are authorized to call for information, summon any documents and examine any person for inquiry.<sup>cliii</sup> Notwithstanding immunity afforded to government officers under the good faith provision<sup>cliv</sup> officers guilty of conducting illegal searches and arrest without reasonable grounds are liable to prosecution and punishment.<sup>clv</sup> The provision serves as a check on the otherwise unbridled powers conferred on law enforcement officials. However, the use of such safeguards is not known.

With respect to evidentiary requirements in trials, the CNSA creates a presumption of offence against a person, who fails to account satisfactorily for possession of:

- (1) Illicit substances
- (2) Equipment, apparatus or utensil adapted for the manufacture of drugs
- (3) Any materials undergoing transformation and residue left of materials from which prohibited substances are prepared<sup>clvi</sup>

Documentary evidence standards have also been relaxed to some extent.<sup>clvii</sup> While the provisions appear to dilute standards of proof by shifting the burden of proof on to the accused, Courts have held that section 29 does not absolve the prosecution of its primary duty to prove its case beyond reasonable doubt.<sup>clviii</sup>

Offences under the CNSA are non-bailable i.e. bail is at the sole discretion of the Court and is ordinarily refused unless the Court opines that the case is fit and against a substantial amount of security.<sup>clix</sup> Also, bail cannot be granted for offences punishable with death under the CNSA or any other narcotics law.<sup>clx</sup>

All offences under the CNSA are triable exclusively by Special Courts.<sup>clxi</sup> Offences punishable with imprisonment of two years or less are triable by Judicial Magistrate of First

Class whereas other offences are triable by a Sessions or Additional Sessions Court.<sup>clxii</sup> Thus far, six special Courts have been set up.<sup>clxiii</sup> The same has reportedly resulted in speeding up disposal of cases and securing higher convictions of drug offenders.<sup>clxiv</sup>

The Federal Government may also appoint Special Prosecutors to try cases under the Act.<sup>clxv</sup>

## Statutory structure for implementation

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The Anti-Narcotics Force (ANF) is the principal agency responsible for enforcement of the Narcotics Control Act.<sup>clxvi</sup> The ANF was established in 1995 under the ANF ordinance, later passed as an Act. Before that, the Pakistan Narcotics Control Board (PNCB) in co-ordination with the Anti-Narcotics Task Force implemented anti-narcotics activity. In 1989, a Narcotics Control Division (NCD) was created within the Ministry of Interior to exclusively handle narcotics matters and the ANF functioned as an attached department.

A separate Ministry for Narcotics Control was formed in 2002 with the ANF designated as the lead agency for enforcement.<sup>clxvii</sup> The ANF is headed by a Director General, an appointee of the Federal Government.<sup>clxviii</sup> The Federal Government also appoints other members of the Force.<sup>clxix</sup> The Director General exercises powers similar to that of the Inspector General of Police.<sup>clxx</sup>

Other officials of the Force have powers and liabilities as those of a police officer including powers to conduct search, confiscate goods and assets, detain and make arrests, inquire and investigate offences.<sup>clxxi</sup> Because of shortage of personnel in the ANF, investigational powers have been delegated to Excise, Customs and Police Departments and other paramilitary agencies.<sup>clxxii</sup> The Federal government has the power to enact rules vis-à-vis functioning of the Force under the ANF Act.<sup>clxxiii</sup>

The Policy Review Board, a high-level decision making and monitoring body, having ministerial representation at the federal level, meets annually to review narcotics control activity.<sup>clxxiv</sup>

Besides, the National Interdiction Committee comprising civil servants and representatives from the Armed Forces oversees and evaluates enforcement efforts aimed at curbing drug trafficking.

## Treatment and rehabilitation of users

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The CNSA defines an addict to mean drug dependent as well as habitual users.<sup>clxxv</sup> The provincial governments are required to register all drug users within their respective jurisdiction.<sup>clxxvi</sup>

Users are required to carry their registration card at all times for presentation before authorities.<sup>clxxvii</sup> The financial burden of treatment, care and follow up of users is shared between the provincial and federal governments; while the former are bound to set up service centres,<sup>clxxviii</sup> the cost of one-time detoxification is to be borne by the Federal Government.<sup>clxxix</sup> *There is no provision in the Act that enables the government to assist, support or regulate non-governmental drug treatment set-ups.*



Registration and compulsory detoxification provisions have, however, not been implemented. Even on paper, users who relapse are left out of government-sponsored treatment, which is mandated only once. Facilities for detoxification both in the government and outside were found to be inadequate and way short of what is required to fulfill the government's statutory obligation.

Under the CNSA, the Federal Government may establish a National Fund for Control of Drug Abuse to allocate resources for drug supply and demand reduction activities including treatment and rehabilitation of drug users.<sup>clxxx</sup> According to expert sources, the fund is envisaged to receive:

- 1) Grants from the Federal or the Provincial government
- 2) Sale proceeds of the unserviceable commodities and vehicles provided by donors narcotics control
- 3) Grants by any person or institutions
- 4) Income from the investment of the amounts credited to the fund

Additionally, proceeds from sale of seized assets (acquired from drug related crimes) are reportedly transferred to the National Fund.<sup>clxxxii</sup>

Concerns about drug trafficking have overshadowed domestic problems of drug use, treatment and rehabilitation of users, which have been given a marginal treatment in the CNSA.

### Inconsistent legal approach to drug use

The Prohibition (Enforcement of Hadd) Order makes use of intoxicants a serious offence. The CNSA, on the other hand, does not criminalise drug users. Instead, the Act obligates the government to identify, register, treat and restore drug users back to the community. The two statutes are at variance vis-à-vis the legal treatment accorded to persons with drug related problems. Whether an addict in contact with authorities finds himself in prison for violating the Hadd Order or is able to seek treatment at a centre established under the CNSA remains unclear.

### Juveniles using drugs

Minor drug users are juvenile offenders, punishable under the Hadd (Prohibition) Order. Those caught in possession of illicit drugs are additionally liable under the CNSA. Such children are to be tried in separate Courts set up under the Juvenile Justice System Ordinance, 2000 and may be placed in borstal institutions.<sup>clxxxii</sup> No specific provision has been made for drug dependent children either in the Ordinance or the rules enacted thereunder,<sup>clxxxiii</sup> besides medical treatment for juveniles suffering from serious illnesses including TB, Hepatitis B and C, and HIV/AIDS.<sup>clxxxiv</sup>

## End Notes

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- <sup>xxii</sup> Global Epidemiology of Injecting Drug Use and HIV among People who Inject Drugs: a systematic review. Bradley M Mathers, Louisa Degenhardt, Benjamin Phillips, Lucas Wiessing, Matthew Hickman, Steffanie A Strathdee, Alex Wodak, Samiran Panda, Mark Tyndall, Abdalla Toufik, Richard P Mattick, for the 2007 Reference Group to the UN on HIV and Injecting Drug Use
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- lxxxvi Section 4.
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- xciii Cases punishable by death or arising out of Enforcement of Hadd Order can only be tried by Court of Sessions. See <http://www.infopak.gov.pk/public/govt/judiciary.htm>.
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- cviii See Section 6.
- cix Prof. Dr. Anis Ahmad "The Islamic Injunctions on Drugs: A universal approach" (UNODC Publication Draft).
- cx Ibid
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- cxv Section 11.
- cxvi Section 6.
- cxvii Section 24.
- cxviii Section 25.
- cxix Section 26.
- cxix Sections 21, 22 and 23.
- cxx Section 31.
- cxxi Rule 28, Islamabad Capital Territory Prohibition Rules 1981. Similar provisions are contained in Prohibition rules issued by Baluchistan, Punjab, North West Frontier and Sind provinces.
- cxxii Rule 29, Islamabad Capital Territory Prohibition Rules 1981. Similar provisions are contained in Prohibition rules issued by Baluchistan, Punjab, North West Frontier and Sind provinces
- cxxiii Prof Dr. Anis Ahmad above n77.
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- cxxiv Control of Narcotic Substances (Regulations of Drugs of Abuse, Controlled Chemicals, Equipment and Materials) Rules, 2001
- cxxv Ministry of Narcotics Control, Government of Pakistan "Country Profile" available at [www.diplomatie.fr/routesdeladrogue/textes/pakistan.pdf](http://www.diplomatie.fr/routesdeladrogue/textes/pakistan.pdf).
- cxxvi Section 2(s), Control of Narcotic Substances (Regulations of Drugs of Abuse, Controlled Chemicals, Equipment and Materials) Rules, 2001. Manufactured drugs are defined in sec 2(q).
- cxxvii Section 2(za); See Schedule.
- cxxviii Section 2 (k): "Controlled substance means any substance which may be used for the production or manufacture of narcotic drugs or psychotropic substance".
- cxxix Sections 4 and 5.
- xxx Defined under section 2(p) of the CNSA to mean all processes for obtaining, refining, transforming, making and preparing such drugs and substances.
- xxxii Section 6.
- xxxiii Section 7.
- xxxiv Section 8.
- xxxv Sections 10 and 11.
- xxxvi Sections 12 and 13.
- xxxvii However, drug use, as such, is forbidden under Islamic law. See 2(g) Prohibition (Enforcement of Hadd) Order, 1979.
- PLD 2002 Quetta 58

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- cxxxviii Section 9, CNSA.
- cxxxix Section 9(a).
- cxl Section 9(b).
- cxli Section 9(c).
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- cxliv Section 20, CNSA.
- cxlv Section 21 allows an authorized officer to enter, search, seize and arrest without a warrant if, in her/his opinion, an offence pertaining to a prohibited substance has been committed under the Act or where such substances are kept or concealed and a warrant cannot be obtained without affording an opportunity to the said offender to escape or destroy evidence.
- cxlvi Section 21(2).
- cxlvii Section 21(1).
- cxlviii Section 21(1).
- cxlix Section 21(1).
- cl Section 21(1).
- clii Section 22.
- cliii Section 23.
- cliiii Section 31.
- cliv Section 64.
- clv Section 26 lays down punishment for vexatious entry, search, seizure and arrest operations conducted by authorized officials.
- clvi Section 29.
- clvii Section 30 CNSA.
- clviii PLD 2002 Quetta 58 + 2002 MLD 1983 (Pesh)
- clix Section 51 (2) CNSA.
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- clxiii Interview with Ismail Hassan Niazi, Senior Joint Secretary, Ministry of Narcotics Control, Government of Pakistan (October 2004) (Country visit notes on file with the Unit).
- clxiv See Bureau for International Narcotics and Law Enforcement Affairs "International Narcotics Control Strategy Report 2001: Pakistan" (March 2002), available at <http://www.state.gov/g/inl/rls/ncrpt/2001/rpt/>.
- clxv Section 50, CNSA.
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clxxxii Section 2(a) of the Juvenile Justice System Ordinance 2000 defines such institution to mean a place where child offenders may be detained and given education and training for their mental, moral and psychological development.

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