

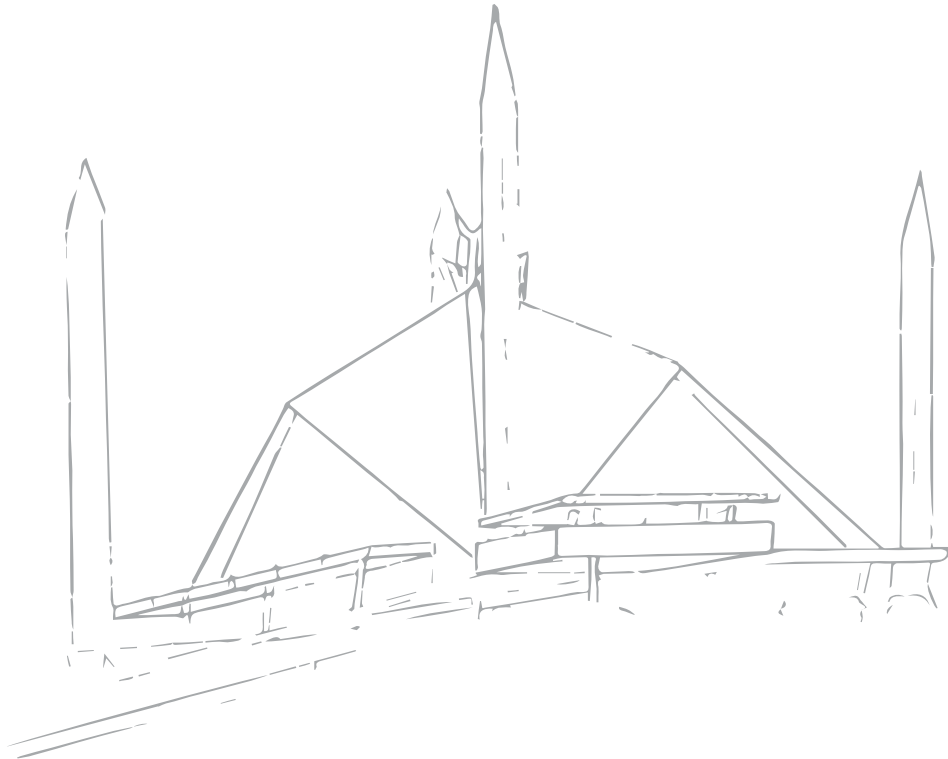


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Pakistani laws on the use of narcotics and drug addiction: Need for Reforms

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Abstract

The use of narcotic substances and drug addiction are growing at alarming levels in Pakistan. The harsh anti-narcotics laws, which are against the spirit of the Sharia, have failed to contain this mushrooming growth and have instead added to the suffering of drug addicts. Based on the qualitative research carried out in district Swat, Khyber Pakhtunkhwa (KPK), this paper provides for the ineffectiveness of these laws and highlights the challenges in their implementation. The government's lack of interest to address this issue has also been observed through the absence of medical treatment and rehabilitation facilities for drug addicts. It is suggested that the existing laws should be reformed in favour of addicts and harm reduction programmes should be introduced in the wider interest of the society.

Keywords: Pakistan, use of drugs, addiction, KPK, Islamic law

1. Drug Use and Addiction in Pakistan

The use of controlled drugs and other narcotic substances and drug addiction are constantly growing problems in Pakistan.¹ Despite harsh anti-narcotics laws, the country has witnessed an enormous growth in the number of drug addicts in the last three decades, and today Pakistan stands as one of the most drug-affected countries in the world.² In the last two decades, injection of cheap drug concoctions and the use of various chemicals with

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¹ Tariq Khosa, 'Pakistan's Drug Menace' *Dawn*, (Karachi, 17 December 2012).

² Ghazal Pasha, 'Rising trend of substance abuse in Pakistan: a study of sociodemographic profiles of patients admitted to rehabilitation centres' (2019) 167 *Public Health* 34 <doi.org/10.1016/j.puhe.2018.10.020> accessed 26 June 2019.

liquor, , has become common which on various occasions led to collective deaths.³ In one reported incident in March 2016, more than 50 people died after consuming spurious liquor in Sindh.⁴ The use of Methamphetamine 'orice' has become very popular in the last few years, which results in risky, violent and hostile behaviour among the users.⁵ The last decade has witnessed an increasing trend in the spread of hepatitis B, C and HIV/AIDS amongst addicts all over the country due to used syringes and needles.⁶ Such an egregious situation of the problem demands a holistic intervention on part of the government and thus needs to be studied critically.

2. Root cause of the drug use in Pakistan

It is generally believed that opium and marijuana were traditionally used as narcotics in Afghanistan⁷ and by extension in the tribal areas of Pakistan, but drug addiction was never a problem in Pakistan until early 1980s.⁸ The mass-scale

³ See Hassan Awan, *Literature Review of Drug related laws and policies in Pakistan: 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* (Society for Sustainable Development 2009).

<www.ssd.com.pk/reports/Literature%20Review.pdf> 7 accessed 20 October 2015.

⁴ Muhammad Hussain Khan and Hanif Samoon, 'At least 35 die after consuming spurious liquor in Tando Mohammad Khan' *Dawn*, (Karachi, 22 March 2016).

⁵ Interview with Arshad Ali, Advocate High Court Peshawar (Swat, 10 July 2016); Hammad Ahmed Hammad and Gahzal Hakani, 'Awareness and use of methamphetamine (ICE) among the people of Karachi, Pakistan' *World Journal of Pharmaceutical Research* (2018) 7 (17) 34.

⁶ Editorial, 'Pakistan: A victim of the destructive effects of the drug use' *Voice of America* (Urdu) (English translation done by the author of the current paper) (Washington DC, 13 December 2014) ; United Nations Office on Drugs and Crime (UNODC), 'World Drug Report 2015'

<<https://www.unodc.org/wdr2015/>> 4 accessed 15 March 2016.

⁷ Ikarmul Haq, "Pak-Afghan Drug Trade in Historical Perspective" *Asian Survey* (1996) 36 (10), p. 945.

⁸ A.Z. Hilali, "Costs & Benefits of Afghan War for Pakistan", *Contemporary South Asia* (2002) 11 (3), 291; Yahya Birt, 'Being a real man in Islam: Drugs, criminality and the problem of masculinity' (Cambridge Mosque Project, 24 December 2014) <<http://masud.co.uk/being-a-real-man-in-islam-drugs-criminality-and-the-problem-of-masculinity/>> para 9 accessed 13 November 2015.

introduction of drugs into the Pakistani society is linked with two important events. Firstly, when the Afghan refugees arrived in Pakistan in the late 1970s, some wealthy and influential refugees were allegedly involved in the local production and international trade of drugs in collaboration with some elements in the Pakistani establishment, to raise funds for their armed struggle against the former USSR troops in Afghanistan.⁹ Secondly, after the withdrawal of the USSR troops and the ensuing anarchy, Afghanistan emerged as a major drug producer on the world scale in the 1990s; a major chunk of the drugs originating from Afghanistan, targeting international markets through Pakistan, ends up in the local markets¹⁰ thus making access to drugs easy for everyone.¹¹

Widespread poverty and fast-increasing unemployment push many people into psychological stress and anxiety which, coupled with the paucity of social nets, lead them to seek refuge in narcotic drugs and substance.¹² Due to lack of access to proper healthcare facilities, poor people use cheap drugs such as opium for various health issues including joint pains, asthma or arthritis which after prolonged use lead to addiction. Many people, especially youth from the financially well-off families, become addicts due to peer pressure or influence or sometimes by misadventures in seeking excitement through trying drugs

⁹ Dessa K. Bergin-Cico, *War and drugs: The role of military conflict in the development of substance abuse* (Routledge, Taylor & Francis, 2015) 108.

¹⁰ Safiya Aftab, 'Post 2014: The regional drug economy and its implications for Pakistan' (CIDOB Policy Research Project 2014).

<www.cidob.org/en/content/download/38315/597263/file/FEBR_UARY_2014_SAFIYA+AFTAB.pdf> 3-4 accessed 9 December 2015.

¹¹ Editorial, 'Drugged up in Pakistan' *Aljazeera English* (Doha, (10 October 2014); Syed Nayyar Abbas Kazmi, 'Pakistan: Not a source but a victim country' (United Nations Asia and Far East Institute) Resource Material No. 65, available at:

<https://www.unafei.or.jp/english/publications/Resource_Material_65.html> 130 accessed 16 July 2016.

¹² Editorial, 'Poverty, joblessness pushing youth to drug addiction:', *The News International* (Karachi, February 25, 2011); Farhat Yaqub, "Pakistan's drug problem" *The Lancet* (2013) 381 (9884) 2151; Interview with Nasir Shah, Advocate High Court Peshawar (Swat, 12 July 2016).

without realising their harmful effects.¹³ Something that does not appear on the radar of the relevant actors and merits investigation is biopsychosocial factor which is another reason for drug use disorders and dependence.¹⁴

3. Anti-Narcotics Laws

In order to gather Pakistani foot-soldiers to fight alongside Afghan *Mujahideen* against the former USSR troops, the then military ruler General Ziaulhaq was promoting religion at political, state and community levels.¹⁵ He also introduced a 'move towards Islamisation of criminal laws' (collectively called *Hudood Order*) whereby offences under Pakistan Penal Code (PPC) and the Criminal Procedure Code (CrPC) – both based on the Common law system, were merged with the *Hudood Order* which was based on the *Hanafi* School of Islamic jurisprudence.¹⁶

The Prohibition of (Enforcement of *Hadd*) Order of 1979 (President's Order No.4, referred to hereafter as PHO) was the first law introduced in the country that dealt with drug use, possession, and production etc. Article 4 of PHO, which deals with owning or possession of intoxicants (Non-Muslims were exempt for keeping small quantities for religious events), reads: -

Whoever owns, possesses or keeps in his custody any intoxicant shall be punished with imprisonment of either description for a term, which may extend to two years, or with whipping not exceeding thirty stripes, and shall also be liable to fine:

Provided further that if the intoxicant in respect of which the offence is committed is heroin, cocaine, opium or coca leaf, and the quantity exceeds ten grams in the case of heroin or cocaine or one kilogram in the case of opium or coca leaf, the offender shall

¹³ Karamat Ali, "Causes of Drug Addiction in Pakistan," *Pakistan Economic and Social Review* (1980) 18 (3/4) 102; Interview with Pardul Khan, Advocate High Court Peshawar (Swat, 14 July 2016).

¹⁴ United Nations Office on Drugs and Crime (UNODC) & The Ministry of Interior and Narcotics Control, 'Drug Use in Pakistan 2013' <https://www.unodc.org/documents/pakistan/Survey_Report_Final_2013.pdf> 6 accessed 12 August 2016.

¹⁵ Yahia Baiza, 'Education in Afghanistan: Developments, influences and legacies since 1901' (Routledge, Taylor & Francis, 2013) p. 139.

¹⁶ The Council of Islamic Ideology (CII), 'Report on *Hudood Order*'.

be punishable with imprisonment for life or with imprisonment which is not less than two years and with whipping not exceeding thirty stripes, and shall also be liable to fine.

There were many procedural and technical flaws in PHO.¹⁷ The sentence prescribed for trafficking, under Article 3,¹⁸ was lenient compared to the punishment for possession/ use of small quantities of drugs, and it was difficult for police to make solid cases against drug dealers.¹⁹ In 1997, the government introduced a secular law called the Control of Narcotics Substances Act (CNSA) to control the production, processing and trafficking of such drugs. Section 9 of CNSA (amended in 2017)²⁰ deals with punishment for possession, among others, of drugs and is divided into three sub-sections depending on quantities of drugs. Sub-section (a) which deals with the issue in hand reads:

Whoever contravenes the provisions of sections 6, 7 or 8 shall be punishable with: -

a) imprisonment which may extend to two years but not than less than six months and shall also be liable to fine, if the quantity of the narcotic drug, psychotropic substance or controlled substance is one hundred grams or less.

Section 6 reads:

No one shall produce, manufacture, extract, prepare, possess, offer for sale, sell, purchase, distribute, deliver on any terms whatsoever, transport, dispatch, any narcotic drug, psychotropic substance or controlled substance, except for medical, scientific or industrial purposes in the manner and subject to such

¹⁷ Aarij S. Wasti, 'The Hudood Law of Pakistan: A social and legal misfit in today's society' *Dalhousie Journal of Legal Studies* 12 (2003) 63.

¹⁸ Punishment for trafficking etc. of any intoxicants was up to five years imprisonment, whipping up to thirty stripes and a fine while punishment trafficking etc. of opium, coca leaf, and opium or coca derivatives was from two years up to life imprisonment, with whipping up to thirty stripes and a fine.

¹⁹ *Khan*.

²⁰ The KPK government is working on a draft bill to add to 9(a)CNSA 'seven years imprisonment' for possessing or carrying less than 100 grams of crystal meth or ice. See Javed Aziz Khan, 'KP govt considers strictest punishment for ice dealers' *The News International* (Islamabad, 10 March 2019).

conditions as may be specified by or under this Act or any other law for the time being in force.

3.1. Differences between PHO and CNSA

The *Hudood* laws including PHO were enacted by General Zia under the influence of conservative religio-political leaders and parties such as *Jamat Islami*.²¹ Based on the 'deterrence' theory of Islamic penology, these laws prescribed harsh punishments for criminal offences²² and were subjected to severe criticism by the civil society, human rights organisations, and NGOs.²³ CNSA is more liberal and exhaustive law about narcotics as compared to PHO and under Section 76, read with Section 74, its provisions have overriding effects over PHO.

Under Article 6 of PHO, 'whoever, intentionally and without *ikrah* or *iztirar*, takes an intoxicant by any means whatsoever, whether such taking causes intoxication or not, shall be guilty of drinking.' Thus, the use of intoxicants is a serious offence under this Article.²⁴ Article 8 provides for whipping numbering eighty stripes if the punishment is awarded under *Hadd*, subject to confirmation by appellate court, while Article 11 provides for imprisonment up to three years or whipping not exceeding thirty stripes or with both if the punishment is awarded under *Tazir*. CNSA, in contrast to PHO, does not criminalise drug use but criminalises its possession only. Judicial interpretations suggest that 'possession' under 9(a) CNSA is not aimed at users; it has been used in a wider sense to include each step involved in trafficking such as dispatch, transportation and delivery, thereby implying it is targeted at traffickers.²⁵

²¹ Farhat Haq, 'Jamaat-e Islami' in *The Islamization of Pakistan, 1979-2009 Viewpoints* (Sp ed., the Middle East Institute, 2009) 28.

²² Abdullah Saeed, *The Qur'an: An Introduction* (Routledge, 1st ed., 2008) 177.

²³ Tahir Wasti, *The Application of Islamic Criminal Law in Pakistan: Sharia in Practice* (Brill, 2009) p. 4.

²⁴ Rahat Imran, 'Legal Injustices: The Zina Hudood Order of Pakistan and its implications for women' *Journal of International Women's Studies* 7 (2005) (2), 78; Martin Lau, 'Twenty-Five Years of Hudood Orders: A Review' *Wash. & Lee L. Rev.* (2007) 64 1291.

²⁵ *Mehrab Khan v The State* PLD 2002 Quetta 58; *Ghulab Ali Alias Ghulabo v The State*, PCrLJ Lahore 1649.

Another major difference is that CNSA provides for treatment and rehabilitation of addicts which PHO does not. The introduction to CNSA states, amongst others: 'whereas it is expedient to regulate the treatment and rehabilitation of narcotics addicts and for matters connected therewith and incidental thereto'. Sections 52 and 53 of CNSA obligate the government to identify, register (and issue registration cards), treat and rehabilitate drug users. The two statutes therefore offer two different regimes and it is unclear whether an addict, when arrested by police, finds himself in prison for violating PHO or can seek treatment under CNSA.²⁶

3.2. The *Sharia* on $\frac{3}{4}$ PHO and 9(a) CNSA

The *Sharia* prohibits the use of drugs to ensure 'protection of human life and intellect' as well as to prevent any potential harm to the society. According to two former *Muftis* of Azhar University, Sheikh Alzawahiri and Sheikh Saleem, alcohol befogs mind while narcotics mars the senses of thought and cognizance as well as lead to indolence, withdrawal and negligence towards family.²⁷ However, the *Qur'an and Sunnah* did not fix any punishment for drug use. Some Muslim jurists compare drugs with alcohol and suggest *Hadd* punishment while others such as Ibn Taymiyyah and the *Hanafi* School do not equate it with alcohol and thus propose *Tazeer* punishment that allows the judge and the rulers discretion to waive or award punishment.²⁸

In his famous exegesis 'An Introduction to the Understanding of the Quran', Maududi, the founder of Jamat Islami and a Muslim revolutionary ideologue, while interpreting chapter five verse 90 of the *Qur'an* related to the use of alcohol, writes: 'it is the bounden duty of an Islamic government to enforce

²⁶ United Nations Office on Drugs and Crime (UNODC) Regional Office for South Asia, 'Legal and policy concerns related to IDU harm reduction in SAARC countries' (2007).

²⁷ Khalid bin Abelrahman Al-Humaidi, 'Incitement to the Crime of Drug Usage' (MA dissertation at Naif Arab University for Security Sciences 2008).

²⁸ Muhammad Mushtaq Ahmad, "The Doctrine of *Siyasah* in the Hanafi criminal law and its relevance for the Pakistani legal system" (2015) *Islamic Studies* 52 (1) 29.

this prohibition'.²⁹ However, according to Sayyed Qutb, a renowned Egyptian revolutionary ideologue and a contemporary of Maududi, the *Sharia* can only be implemented in its true spirit when the Muslim society develops its moral character to a level where it is easily accepted by the social order.³⁰ Before the emergence of modern nations states the *Sharia* was a socially embedded system, a mechanism and a process created for the social order keeping in view of cultural and moral norms,³¹ a good example of which is the gradual prohibition of alcohol. Looking into the order of revelations, the *Quran* first described its harms, then expressed a disliking for it and finally, when the Muslim society of Medina was ready to accept its prohibition, God prohibited its use.³² Maududi's interpretation, therefore, may still hold ground according to some scholars, but the Pakistani society is still far from accepting the prohibition on the use of drugs, thus rendering these laws nothing but a futile legislative exercise.³³

The *Sharia* is silent on the nature of addiction, but many modern Muslim scholars acknowledge that addiction is a disease or psychological disorder that needs the attention of family, society, religious community and the public health services.³⁴ Under the Islamic medical ethics, it is the right of the people in need to receive medical care.³⁵ Moreover, Islam is a religion of

²⁹ Syed Abul A'ala Maududi, *An Introduction to the understanding of the Qur'an* (tr. Zafar Ishaq Ansari 1972) <www.tafheem.net/tafheem.html> accessed 14 September 2015.

³⁰ Luke Loboda, 'The Thought of Sayyid Qutb' (Ashbrook Statesmanship Thesis 2004) <www.ashbrook.org/wp-content/uploads/2012/06/2004-Loboda-The-Thought-of-Sayyid-Qutb-PDF.pdf> 17-18 accessed 8 September 2015.

³¹ Wael B. Hallaq, *An Introduction to Islamic Law* (Cambridge University Press 2009) 165

³² Khashan Ammar, "The Quran's Prohibition of Khamr (Intoxicants): A Historical and Legal Analysis for the Sake of Contemporary Islamic Economics" *Kyoto Bulletin of Islamic Area Studies* (2016) 9 p. 97.

³³ The law could perhaps be more effective if the people, police, prosecution and the judiciary truly followed Islam. See Wasti.

³⁴ Judith K. Muhammad, 'Islam against Drug Abuse' (Islam for Christians) <<http://www.islamforchristians.com/islam-drug-abuse/>> para13 accessed 7 November 2015.

³⁵ World Health Organisation (WHO) Regional Office for the Eastern Mediterranean, 'Islamic code of medical and health ethics' (EM/RC 52/7

kindness and compassion. The Prophet Muhammad is reported to have said, 'be merciful to the inhabitants of the earth and He who is in Heaven will be merciful to you' and that 'the one who is not compassionate, God will not be compassionate to him'.³⁶ In another Hadith the Prophet is reported to have said,

God will say on the Day of Resurrection: O son of Adam, I fell ill, and you visited Me not. He will say: O Lord, and how should I visit You when You are the Lord of the worlds? He will say: Did you not know that My servant so-and-so had fallen ill, and you visited him not? Did you not know that had you visited him you would have found Me with him?³⁷

The Prophet also stressed on the rights of neighbours and said, 'he is not a believer who eats his fill whilst his neighbour beside him goes hungry'.³⁸ Therefore, it is a collective sin on the part of society and the state to deprive addicts – the most vulnerable people in the community, from receiving support and medical treatment³⁹ and to leave them, on the one hand, at the mercy of the notorious police and drug mafia and, on the other hand, let them be demonised by the community.⁴⁰ It is the responsibility of the state and the society to embrace addicts and help them overcome this problem.⁴¹

2005) <<https://apps.who.int/iris/handle/10665/122351>> 3-5 accessed 2 October 2015.

³⁶ Mohamed Imran Mohamed Taib, 'The central role of compassion in Muslim ethics' (6 March 2016) Islamcity <www.islamcity.org/9990/the-central-role-of-compassion-in-muslim-ethics/> accessed 8 May 2016)

³⁷ Mulim b. al-Ḥujjāj al-Qushayrī, *Ṣaḥīḥ* Muslim Kitāb al-Birr wa'l-Ṣīlah wa'l-'Ādāb. Ḥadīth No. 18.

³⁸ Abu Bakr Ahmed Al-Baihaqi, *Sunan al-Kubra*, Hadith no. 19049.

³⁹ Siama Rashid, Alex Copello and Max Birchwood, "Muslim faith healers' views on substance misuse and psychosis" *Mental Health, Religion & Culture*, (2012) 15 (6) p. 653.

⁴⁰ Shaul M. Gabbay, 'The treatment of drug offences in Sharia-Based Countries: The case of Pakistan' *International Journal of Humanities and Social Science* (2014) 4 (10), 57; Salah Uddin, 'Globalized Consumption of Intoxicant Drugs and Narcotics: An Analytical Study in Islamic Perspective Subsequent to Iranian Experimentation' *Istidrak* (2019) 1 (2) 27.

⁴¹ Interview with Sabir Jan, Advocate High Court Peshawar (Swat, 9 July 2016).

4. Effectiveness of 3/4 PHO and 9(a) CNSA

The participants were equally divided on the effectiveness of the existing legal regime. According to Arshad,⁴² Nasir,⁴³ and Sabir,⁴⁴ despite harsh anti-narcotics laws the business of drug trafficking is flourishing day by day; in parallel, the use of drugs is also increasing in the society. Pardul was of the view that many rich people are using drugs for fun without any action by the Police while the poor addicts pay a heavy price in the form of frequent arrests by the police, prolonged imprisonment, delays in trials, lack of access to medical care and social stigmatisation.⁴⁵ Hussain⁴⁶ and Nawab⁴⁷ mentioned that laws could be more effective if implemented in their true spirit while now they appear 'exclusionary' because they are applied discriminately against the poor. Ajmal⁴⁸ and Bacha⁴⁹ were satisfied with the effectiveness of the laws saying that in the absence of these laws the use of drugs would be rampant all over the country.

It is difficult to measure the effects of criminal sanctions on a disapproved behaviour but a decrease in the subsequent criminal activity is still a good test about the effectiveness of the law.⁵⁰ Although there is no authentic statistics available, there is an average 50,000 annual increase in the number of drug addicts in the country.⁵¹ According to a report jointly published by the UNODC and the Ministry of Interior and Narcotics Control, around 6.7 million people used drugs in 2012 of whom 4.25

⁴² *Ali.*

⁴³ *Shah.*

⁴⁴ *Jan.*

⁴⁵ *Khan.*

⁴⁶ Interview with Hussain Ahmad, Advocate High Court Peshawar (Swat, 14 July 2016).

⁴⁷ *Bahadur.*

⁴⁸ Interview with Ajmal Akhunzada, Advocate High Court Peshawar (Swat, 18 July 2016).

⁴⁹ Interview with Bacha Rahman, Advocate High Court Peshawar (Swat, 20 July 2016).

⁵⁰ Allott Anthony, 'The Effectiveness of Laws' *Valparaiso University Law Review* (1981) 15 p. 229.

⁵¹ 'Pakistan burns tons of narcotics to observe World Drug Day' *Bayanihan* (Philippines, 28 June 2012),

<<http://bayanihan.org/2012/06/28/pakistan-burns-tons-of-narcotics-to-observe-world-drug-day/>> accessed 2 September 2015.

million were addicts.⁵² While briefing the Senate Standing Committee on Interior and Narcotics Control, the then Director General of the Anti-Narcotics Force mentioned that there were around seven million drug addicts in Pakistan in 2015. Out of this seven million, three million were those who used medicines without prescription. He also stated that 700 people die every day from drug addiction.⁵³ These numbers confirm that the existing anti-narcotics laws are ineffective and have badly failed to put the genie back in the bottle.

5. Challenges in implementation of the laws

Six participants were against the existing laws due to immense challenges in their implementation. According to Nasir, Arshad and Sabir, PHO was introduced without taking into consideration the local realities as traditionally marijuana and cannabis have been widely used in this region for centuries. In contrast, CNSA was introduced 18 years later when the successive civilian governments realised that production and trafficking of drugs became a big challenge which was bringing bad name to the country in the world community; however, it is difficult to implement CNSA as a strong drug mafia, with close connections to some powerful elements in the establishment, are running the drug trafficking business.⁵⁴ According to Pardul, Hussain and Nawab, Police enjoy unfettered powers under ¾ PHO which they mostly misuse either to extract money from the poor addicts or to show their performance.⁵⁵

Though Ajmal and Bacha confirmed that these laws were misused by the police,⁵⁶ Ajmal sees them as the only solution otherwise drugs will make their way to each house in the country. According to Bacha, drugs are a religious and moral evil and a menace to the society; drug users and addicts can go to any extremes including forcing their wives into prostitution to get some money for buying drugs. The extremely limited reported

⁵² UNODC, 13.

⁵³ 'Around 7 million drug addicts in Pakistan, Senate told' *Dawn* (Karachi, 6 July 2015).

⁵⁴ *Shah; Ali; Jan.*

⁵⁵ *Khan; Ahmad; Bahadur.*

⁵⁶ *Akhunzada; Rahman.*

decisions of the higher judiciary confirm the challenges related to the implementation of these laws especially their misuse by the law enforcement agencies. In *Mst. Zubaida Sadruddin v The State*, while reversing conviction order of the lower court, the Peshawar High Court held:

‘not only in this case but in a number of other cases this Court has observed that investigating agencies, be it Police, Anti-Narcotics Force, Customs Department or the Airport Security Force etc. have generally failed to properly investigate the cases, either because of their incompetence or because of lack of training or for any other reason.’⁵⁷

In an appeal against a judgement of Lahore High Court whereby bail was refused to the petitioner in a case registered under ¾ PHO and 9(b) CNSA for possession of 250 grams of charas, the Supreme Court held: ‘It is not proper to keep a person of such an offence for an indefinite period in jail without submission of challan and permit the police to frustrate the provisions of law on the subject’.⁵⁸ The august court also held in the same judgement:

‘It is general tendency that without proper check and restraints on the powers of the police officials and locating the fault in public functionaries the burden of negligence and inefficiency of police is put either on the shoulders of innocent people at the cost of public time and exchequer or it is shifted to the Courts to be held responsible for the delay in disposal of cases. The delay of more than one year in submission of challan in such petty cases without any legal justification, would amount to delay in the disposal of cases by the Courts and curtailment of liberty of persons involved in such cases through abuse of the process of law.’

Despite the overriding effect of CNSA, the police still use ¾ PHO as this way the addicts find it difficult to get the concession of bail when arrested.⁵⁹ By simply adding ‘trafficking’

⁵⁷ *Mst. Zubaida Sadruddin v The State* PLD 2006 Peshawar 128.

⁵⁸ *Subhan Khan v The State* SCMR 2002 1797.

⁵⁹ *Nauroz Khan v The State* PCrLJ 2000 Peshawar 1222.

to 'possession'⁶⁰ in the FIR, they change the nature of the case as the punishment for trafficking is 'life imprisonment' in which case it is difficult to get an accused out on bail while maximum punishment under 9(a) CNSA is two years which is a bailable offence.⁶¹ The main reason given by the police and prosecution for using ¾ PHO instead of or together with 9(a) CNSA is that the latter gives a *carte blanche* to the accused for repeating similar crimes.⁶² Although some of those in possession of small quantities of drugs, or addicts, may be involved in trafficking, these small-time unskilled workers are easily replaceable by an already available big pool of poor people who will happily jump on any such opportunity.⁶³ Since the lower courts do not easily grant bails in offences when the prescribed punishment is more than ten years, a few addicts knock at the doors of higher courts, using the services of *pro bono* young lawyers, where they are either granted bail or acquitted.⁶⁴ The cost of prohibition thus outweighs the intended benefits of legislation due to the misuse of these laws by the police.

6. Treatment and Rehabilitation of Addicts

The participants unanimously agreed that addiction is a relapsing disorder and expressed the need for the treatment and rehabilitation of the addicts. Nasir, Arshad, Sabir and Hussain referred to the sections of the CNSA that require for the provision of such facilities to the addicts, but that the state has failed in ensuring its availability.⁶⁵ Pardul and Nawab said that we as a society, will be responsible to God for not taking measures for the treatment of the addicts.⁶⁶ Even Ajmal and Bacha who are very much supportive of the existing, emphasised on the need for treatment as addicts are helpless in coping with their suffering.⁶⁷

⁶⁰ Possession of small quantity for personal consumption which is not an offence under CNSA.

⁶¹ *Said Muhammad v The State* Peshawar High Court CrM. No. 642/2004 PHC 2059.

⁶² *Daud Khan v The State* Cr.M. No. 290/2004 PHC 2033.

⁶³ See Klein Axel, 'Drugs and the World' (2008) (Reaktion Books) 56.

⁶⁴ *Niaz Ali v The State* Cr.M.No. 1282/2003 PHC 1983.

⁶⁵ *Shah; Ali; Jan; Ahmad*.

⁶⁶ *Khan; Bahadur*.

⁶⁷ *Akhunzada; Rahman*.

There are different theories of addiction but in general it is considered as a chronically relapsing disorder⁶⁸ or a condition characterised by a compulsion to use an addictive substance on which one has become physically and psychologically dependent due to repeated consumption.⁶⁹ It seems the drafters of the CNSA were aware that addiction is a disease or a disorder thus they introduced some provisions for the treatment and rehabilitation. However, these provisions were never translated into concrete measures by the government. There are a few treatment and rehabilitation centres in some parts of the country which work mostly in isolation from the mainstream health system.⁷⁰ In 2012, there were around 73 treatment centres, mostly run by NGOs. According to official figures,⁷¹ treatment facilities were available in these centres only for 30,000 addicts per annum. Dost Foundation, a Peshawar-based NGO, started working on emergency basis with the KPK government in 2014 and launched four rehabilitation centres in Peshawar city to offer treatment to 4000 addicts over a period of 30 months; nevertheless, no public report is available about the outcome of this project.⁷² Moreover, the overall problem is much beyond the scope of such limited facilities.⁷³

In a highly ambitious five-year (2010-2014) master plan, the Ministry of Narcotics Control and the Anti-Narcotics Force (ANF) aimed at upgrading the existing and setting up new treatment and rehabilitation centres.⁷⁴ So far, six centres are

⁶⁸ SF Ali and others, 'Understanding the global problem of drug addiction is a challenge for IDARS Scientists' *Current Neuropharmacology* (2011) 9 (1) p. 2.

⁶⁹ Alan I Leshner, 'Addiction is a brain disease, and it matters' *Science* (1997) 278 (5335) p. 45.

⁷⁰ Khosa.

⁷¹ Farhat Yaqub, 'Pakistan's drug problem' *The Lancet* (2013) 381 (9884) p. 2151.

⁷² Dost Welfare Foundation, Peshawar <<https://www.dostfoundation.org/>> accessed 21 June 2019.

⁷³ Kazi.

⁷⁴ The Ministry of Narcotics/ Anti-Narcotics Force, Government of Pakistan, 'Drug Abuse Control Master Plan 2010-2014', (2010) visit:

<https://www.aidsdatahub.org/sites/default/files/documents/Drug_Abuse_Control_Master_Plan_2010_14.pdf> 30-35 accessed 3 October 2019.

established but only two are operational, one in Islamabad and one in Karachi. The ANF's website shows that these two centres, established in 2016, have offered services to less than 3000 addicts.⁷⁵ In brief, all efforts in this regard are ad-hoc and the treatment facilities are short-termed due to lack of proper allocation of funds and the government's lack of interest in addressing this issue.⁷⁶

It is pertinent to mention here that many countries have switched from punitive laws and simple treatment and rehabilitation programmes to Harm Reduction programmes with very positive results.⁷⁷ Harm Reduction is based on the notion that complete abstinence from drugs is not possible for everyone, therefore, efforts should be made to mitigate the adverse effects of addiction.⁷⁸ Following a multi-tier approach, it is medication-assisted treatment (MAT) - with the use of methadone, buprenorphine, and naltrexone, coupled with counselling and behavioural therapies to help addicts overcome addiction.⁷⁹ Due to the low costs involved in its implementation,⁸⁰ it is more suitable for poor countries like Pakistan. Moreover, it is compatible with the *Sharia* as the protection of human life and dignity are the key goals of the *Sharia*⁸¹ and that the Islamic medical ethics allow for the removal of a harm, i.e. addiction,

⁷⁵ <http://anf.gov.pk/ddr_matrc.php> accessed 23 June 2019.

⁷⁶ See Browne David, 'How Pakistan succumbed to a hard-drug epidemic?' *The Telegraph* (London, 23 March 2014).

⁷⁷ Cook Catherine and others, 'The Case for a Harm Reduction Decade: Progress, potential and paradigm shifts' (2016) Harm Reduction International

<www.hri.global/files/2016/03/10/Report_The_Case_for_a_Harm_Reduction_Decade.pdf> 4 accessed 24 June 2019.

⁷⁸ Harm Reduction International, 'What is Harm Reduction?' <<https://www.hri.global/what-is-harm-reduction>> accessed 3 August 2015.

⁷⁹ Neil Hunt and others, 'A review of the evidence-base for harm reduction approaches to drug use' (2003) *Forward Thinking on Drugs* <www.forward-thinking-on-drugs.org/review2-print.html> 9 accessed 17 December 2015.

⁸⁰ Gerald A. Juhnke and W. Bryce Hagedorn, *Counselling addicted families: An integrated assessment and treatment model* (Routledge, Taylor & Francis 2006) 16.

⁸¹ *Uddin*.

through a lesser harm, i.e. use of drugs for treating addicts.⁸² Iran and Malaysia, both Muslim countries, have successfully implemented such programmes with encouraging outcomes.⁸³

7. Is decriminalisation and option?

Five participants were of the view that small quantities of drugs should be decriminalised while three were against the idea of decriminalisation. Nasir suggests that small quantities should be allowed for truck drivers, security guards or those already addicted while Sabir suggests that allowing up to five grams each of *charas* and heroin is okay.⁸⁴ They said that before the merger of the former princely Swat State with Pakistan in 1969, alcohol and drugs were allowed under 'special permits' at certain locations in the state which helped the police to know about the drug users and dealers. Hussain looks at the issue from the perspective of the rights and duties of the state and he sees no reason why the state should assert itself while it has failed in fulfilling its duties. He is of the view that soft drugs having minor effects may be decriminalised in limited quantities. He also gave the example of Swat state but added that these permits were issued only to Hindus and Sikhs and that those using drugs and alcohol were not appreciated by the communities.⁸⁵ According to Pardul, drugs including marijuana and *hasheesh* have been used in the Indo-Pak sub-continent for centuries during the rules of both Muslims and non-Muslims. He added that even some Muslim saints used *hasheesh* for devotional prayers and today the shrines of various saints are the most commonly used places for marijuana and cannabis consumption; therefore, these laws are against the local customs and tradition.⁸⁶ Arshad said that ¾ PHO and 9(a) CNSA were irrelevant for the rich and affluent drug users but it is a

⁸² Aasim I. Padela, 'Islamic medical ethics: A primer' (2007) *Bioethics* 21 (3) 169 <<https://doi.org/10.1111/j.1467-8519.2007.00540.x>> accessed 14 December 2015.

⁸³ Suresh Narayanan, Balasingam Vicknasingamb and Noorzurani Robson, 'The transition to harm reduction: Understanding the role of non-governmental organisations in Malaysia' (2011) 22 *International Journal of Drug Policy* 311 <www.elsevier.com/locate/drugpo> accessed 17 January 2016.

⁸⁴ *Shah* (n 12); *Jan*.

⁸⁵ *Ahmad*.

⁸⁶ *Khan*.

sword hanging over the heads of the poor and addicts; therefore, the poor could be protected through revoking these laws.⁸⁷

Among the three participants who were in favour of the existing laws, Sabir did not rule out decriminalisation but he added that keeping in view the country's vulnerability to drugs, decriminalisation would add to the spread of drugs.⁸⁸ Ajmal and Bacha said that the existing legal regime should be reformed through having more checks on the powers of police.⁸⁹ Ajmal added that the widespread availability of drugs will only exacerbate the problem and lead to more people becoming addicts.

Lack of adequate enforcement mechanisms or frequent misuse defeat the objective of the law, no matter how good it is.⁹⁰ The use of *charas*, *hasheesh* or other opiates for pleasure is in general socially accepted.⁹¹ Rich people use them merrily without any action by police. Substance use is also very common in colleges and universities, and *charas* can easily be smelled in the corridors of students' dorms.⁹² Many politicians, civil servants, judges, military and police officers use *charas* and other opiates in their private and relax gatherings.⁹³ Not only this but in some

⁸⁷ *Ali*.

⁸⁸ *Jan*.

⁸⁹ *Akhunzada* (n 58); *Rahman* (n 59).

⁹⁰ Anthony Allott, 'The Effectiveness of Laws' (1981) 15 *Valparaiso University Law Review* 229 <<http://scholar.valpo.edu/vulr/vol15/iss2/1>> accessed 19 January 2016.

⁹¹ See Shahid Abbasi, 'Drugs and sex at parties in Karachi, Lahore', *The News Tribe* (3 August 2011).

<www.thenewstribes.com/2011/08/03/drugs-and-sex-at-parties-in-karachi-lahore/> accessed 5 April 2015.

⁹² Kayani Ahsan Ul Haq, Mark J. King & Judy Fleiter, 'A qualitative investigation of drug use among Pakistani road users' (20th International Council on Alcohol, Drugs and Traffic Safety Conference, Brisbane, 25-28 August 2013) <<https://eprints.qut.edu.au/65300/>> 2 accessed 28 February 2016; Arfan Riasat, 'Causes and Complications of Injectable Drugs Use in District Faisalabad' (2010) <<http://ssrn.com/abstract=1672776>> accessed 4 March 2016.

⁹³ 'Getting high comes at a higher price' *Pakistan Today* (10 September 2012)

parts of the country including Islamabad, narcotics drugs are openly sold in some public places with no action from the law enforcement agencies.⁹⁴ So, the use of drugs is *de facto* legalised but criminalised under ¾ PHO and 9(a) CNSA. An independent member of the National Assembly raised this matter on the floor of the House and accused parliamentarians of using *charas* in the parliament lodges. However, he was forced by the major political parties to keep quiet and to apologise.⁹⁵ A few years back, a human rights lawyer filed a petition in the Supreme Court for legalisation of *charas* and *hasheesh*, but it was turned down.⁹⁶

8. Conclusion

The existing anti-narcotics legal regime has failed to contain the growing problem of drug use and addiction for various reasons including, but not limited to, the unwillingness of the Pakistani society to respect these laws, misuse of the existing laws by police against the poor and addicts, and the government's lack of interest in treatment and rehabilitation of addicts. Pakistan follows the *Hanafi* School of Islamic jurisprudence according to which it is the discretion of the judges and the legislature to propose any measures for drug use and addiction including decriminalisation. Due to the overriding effect of the CNSA, there is no ground for ¾

<<https://www.pakistantoday.com.pk/2012/09/10/getting-high-comes-at-a-higher-price/>> accessed 5 March 2016; 'High and dry: Pakistan's penchant for hash', *The News International* (Islamabad, 18 December 2017) <<https://www.thenews.com.pk/latest/257633-high-and-dry-pakistans-penchant-for-hash>> accessed 19 June 2019.

⁹⁴ Seshatha, 'Cannabis in Pakistan' *Sensi Seeds*, (03 March 2014) <<https://sensiseeds.com/en/blog/cannabis-in-pakistan/>> accessed 15 April 2015; Saleha Javaid, 'Islamabad's Drug Culture' *Saleha's Blog: Reporting the Facts*, <<https://salehajavid.wordpress.com/2011/03/19/islamabads-drug-culture/>> accessed 25 February 2016.

⁹⁵ 'Jamshed Dasti: Women, Drugs, Liquor being brought to Parliament Lodges' *Sach News* (27 February 2014) <<https://www.suchtv.pk/pakistan/general/item/9198-jamshid-dasti-liquor-drugs-women-being-brought-to-parliament-lodges.html>> accessed 25 June 2019

⁹⁶ 'SC returns petition seeking legalization of bhang' *Dawn* (Karachi, 26 June 2016).

<<http://www.dawn.com/news/1267345/sc-returns-petition-seeking-legalisation-of-bhang>> accessed 25 August 2016.

PHO to exist and it should be revoked while 9(a) CNSA should also be reformed in line with the *Sharia's* teachings and modern understanding of addiction. It is also suggested to introduce Harm Reduction Programmes on an urgent basis as they are easy to implement due to low costs involved. Moreover, they will give addicts a feeling of belongingness to the society and will protect them from the inhumane clutches of police.