

THE CRIMINAL JUSTICE SYSTEM AGAINST ILLICIT DRUG TRAFFICKING IN PAKISTAN

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I. GEOGRAPHICAL LOCATION OF PAKISTAN

Pakistan is located in South Asia and is at the junction of Central Asia and the Middle East, which gives its location great significance. Pakistan's total land border is 6,774 kilometres long, and it borders four countries. While surrounded by land from three sides, the Arabian Sea lies in the south. On the north-east side, Pakistan shares a 500-kilometre-long border with China, and, on the eastern side, it has a 2,912 kilometre border with India. The border between Pakistan and Afghanistan is called the Durand Line and is 2,430 kilometres long. The border between Pakistan and Iran is also called the Pakistan-Iran Barrier and is 909 kilometres long. The Arabian Sea is located south of Pakistan with a coastline of 1,046-kilometres. The Arabian Sea also serves as an important trade route between Pakistan and other countries.

II. CURRENT SITUATION OF ILLEGAL DRUG TRAFFICKING IN PAKISTAN

The Golden Crescent is the name given to the principal area of illicit opium production located at the crossroads of Central, South, and Western Asia. The Golden Crescent covers three countries—Afghanistan, Iran and Pakistan—whose mountainous peripheries define the crescent. Afghanistan is the world's largest producer of hashish and opiates. The majority of opium produced in Afghanistan comes from Kandahar and Helmand provinces.

Due to the ongoing continuous war over the last four decades, Afghanistan has become the global epicentre of poppy cultivation and narcotics production. This is perhaps due to the universally agreed phenomenon that drug trafficking not only generates substantial profits for organized criminal groups, but the illegal profit earned this way remains a major source of funding of such criminal groups and helps in financing international terrorism. The drugs normally smuggled from Afghanistan include opium and other poppy products. This is due to the large-scale cultivation of poppy crops in Afghanistan in which a gradual increase has taken place since the year 2001 till the year 2017. According to the UNODC Afghan Poppy Survey Report 2017, the poppy cultivation in Afghanistan has increased from 7,606 hectares in 2001 to 328,000 hectares in 2017.

As Pakistan shares a common border of 2,611 kilometres with Afghanistan, the illicit drug trafficking from Afghanistan poses a serious social, political and security problem not only for Afghanistan itself but also for Pakistan and other countries of the region.

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III. DRUG TRAFFICKING ROUTES



The routes followed for the purpose mostly join at different border points between Baluchistan and Afghanistan, then passing through Baluchistan towards the Arabian Sea as below:

S/No	Transit Route	Exit from Pakistan
1.	Chamman-Muslim Bagh-Qila Saifullah-Loralai-DG Khan	
2.	Quetta-Panjpai-Kalat-Khuzdar-Bela	Karachi Hub Arabia Sea
3.	Noshki- Kalat-Khuzdar-Bela	Karachi Hub Arabia Sea
4.	Barabcha-GirdiJungle-Kharan-Karachi	Karachi Hub Arabia Sea
5.	Barabcha-GirdiJungle-Kharan-Washuk-Ormara	Arabian Sea
6.	Choto-GirdiJungle-Dalbadin-Kalangor-Pasni	Arabian Sea
7.	Choto-Chagi-Girdi Jungle-Dalbadin-Kalangor-Mand/Turbat-Radeeq-Jiwani	Arabian Sea
8.	Choto-GirdiJungle-Kharan-Washuk-Ormara	
9.	Choto-Dalbadin-Kalangor-Mand/Turbat-Pasni/Gwadar	Arabian Sea
10.	Noshki-Kharan-Washuk-Kalangor-Pasni	Arabian Sea
11.	Barabcha-Yakmacu-Mushkel	Arabian Sea
12.	Barabcha-Chagi-Koh Sultan-Taftan	Arabian Sea
13.	Rabat-Koh Sultan-Saindak-Taftan	Arabian Sea
14.	Kani-Aminabad-Dalbadin-Kharan-Washuk-Kalangor-Pasni	Arabian Sea

IV. AVAILABLE STATISTICS

As per data obtained from the Anti-Narcotics Force, 1,177 operations were carried out against illegal drugs/narcotics dealers in the year 2017. In these operations various narcotic drugs were confiscated. In total, 32,573.10 Kg of opium, 7,132.20 Kg of morphine, 19,775.915 Kg of heroine, 102,113.593 Kg of hashish and 387.09 Kg of cocaine were seized during these operations, which shows that a huge amount of drug trafficking takes place in Pakistan.

V. CHALLENGES

The following are the main challenges faced by the LEAs in combating illicit drug trafficking:

A. Porous Border with Afghanistan

Afghanistan and Pakistan have a 2,430-kilometre-long porous common border called the Durand Line. It passes through hilly and mountainous areas. Due to the difficult terrain and tribal belt, there is uncontrolled movement of persons across the border. The situation is further worsened due to the fact that tribal people are residing on both sides of the border, having common social bonds and family relationships. The easement rights conventionally exercised by Afghan peoples for movement of their goods through the Pakistan border is another aspect of this challenge, as vehicles on their way back from Afghanistan are normally being used to import illicit narcotic substances into Pakistan.

B. Afghan Refugees in Pakistan

Another challenge is that around 3 million Afghan refugees settled in Pakistan. Due to the unbridled movement of these refugees in the country, they can easily roam around the entire country; thus not only is law and order jeopardized but illegal drug trafficking is also facilitated.

C. Lack of Control on Financial Transactions

The majority of the transactions between the tribal peoples associated with narcotics trafficking and their Afghan counterparts takes place through the *hawala/hundi* system. This leads to an absence of control of unusual financial transactions that take place in the illegal trade. Under the law, Section 67 of the Control of Narcotics Substances Act, 1997, financial institutions are responsible to report any unusual financial transactions when there is no apparent source of income. However due to the prevalent system of *hawala/hundi* this provision is almost impracticable in the area.

D. Prevalent Security Situation

Due to the war on terror in Pakistan the security situation across Pakistan is precarious. Most of the areas in the far-flung mountainous regions of the Federally Administered Tribal Area (FATA) are infested with terrorists; hence, ANF cannot operate there against the drug peddlers. Apart from FATA the situation in Balochistan is also precarious. Several sub-nationalist Baloch organizations are involved in active terrorism against the state of Pakistan. Some of the areas through which the smuggling routes pass are no-go areas for ANF and other Law Enforcement Agencies working for drug control.

E. Corruption within Drug Control Departments

It is an established fact that some officials in the drug control agencies are involved in corruption. These "black sheep" in collusion with the drug peddlers not only give protection to the drug peddlers, but also help in transportation of narcotics. A case in example is the FIR dated 06-09-2015 lodged against a high-ranking officer of Police Service of Pakistan in the Police Station Wadh District Khuzdar, Balochistan under 9(C), CNSA-1997 on the directions of the undersigned.

F. Poor and Uneducated Populace

One of the factors facilitating the thriving narcotics business in Pakistan is the lack of literacy and prevalent poverty among the masses. The poor and illiterate youth become easy victims for transportation of narcotics in return for petty sums of money.

G. Rehabilitation of Drug Addicts

According to the UN report on drug addicts, there are 6.7 million people in Pakistan who are drug addicts. This poses a serious challenge to the control of narcotics, and unless a detailed programme is implemented for rehabilitation of these addicts, there will always be demand for drugs.

H. Lack of Modern Technology for Detection of Drugs

One of the problems in controlling drugs in Pakistan is the lack of modern expertise and state-of-the-art gadgetry.

I. Witness Protection

Witness protection is another challenge of the day. Drug trafficking is a transnational organized crime.

People engaged in this crime are members of very powerful groups. Persons who give evidence against these groups are hardly available. Witnesses normally hesitate and even refuse to give testimony before the courts, and the culprits are ultimately acquitted.

VI. LEGAL FRAMEWORK

Cognizant of the gravity of the problems connected with drug abuse and illicit drug trafficking, the government has promulgated a number of laws in the country from time to time. Various Law Enforcement Agencies (LEAs) both at federal and provincial levels, *i.e.* the Anti-Narcotics Force, Provincial Police, National Highways & Motorway Police, Pakistan Customs and respective Excise and Taxation Departments of the provinces, have been tasked under the law to take action, within their respective domains, against narcotic drugs.

A number of statutes have been enacted from time to time to deal with narcotic drug trafficking and their use. These include, the Dangerous Drugs Act, 1930, the Customs Act, 1969, the Prohibition (Enforcement of Hadd) Order, 1979 and Control of Narcotics Substances Act, 1997. Moreover, the Pakistan Penal Code, 1860, the Motor Vehicles Ordinance, 1965 and the National Highways Safety Ordinance, 2000 also contain penal provisions for certain acts committed while under the influence of drugs. The Code of Criminal Procedure (Act V of 1898), along with the Qanoon-e-Shahadat Order, 1984, provide procedural law, in conjunction with the Narcotics Control Act, 1997, for arrest, investigation and trial of the offenders and for procedures for arrest and seizure of the drugs.

“The Control of Narcotics Substance Act, 1997, being the latest and more exhaustive law on the subject of narcotics as compared to the other laws and by virtue of sections 74 and 76 of the Act, *ibid*, its provisions have overriding effect on any other law for the time being enforce”¹. Therefore, the legal framework available under this Act is discussed hereinbelow:

VII. CRIMINALIZATION OF ILLICIT DRUG TRAFFICKING

Illicit drugs or narcotic drugs under section 2, clause (s) of the Control of Narcotics Substance Act, 1997 refers to coca leaf, cannabis, heroin, opium, poppy straw and all manufactured drugs. This law has further defined these substances and their derivatives in detail under the respective clauses of the section. For instance clause (t) of the section has defined opium which, as per the said provision, means “poppy straw that is to say, all parts of the poppy plant (*Papaver Somniferum* or any other species of *Papaver*) after moving, other than the seeds and includes the spontaneously coagulated juice of capsules poppy which has not been submitted to any manipulations other than those necessary for packing and transport. This definition also includes any mixture with or without natural materials of any of the above forms of opium including a mixture containing more than 0.2% morphine”². The law has further defined opium derivatives.

The Control of Narcotics Substance Act, 1997 has not only imposed a prohibition on the cultivation of narcotic plants, possession of narcotic drugs etc. Import or export of narcotic drugs and trafficking or financing the trafficking of narcotic drugs etc., owning, operating premises or machinery for manufacture of narcotic drugs, acquisition and possession of assets derived from narcotics offences and adding abetment or association in narcotics offences under section 4, sections 6, 7 and 8, 10, 12 and 14 of the Act but has also provided punishments for these crimes, respectively, under sections 5, 9, 11, 13, 15 and 16 of the Act.³

VIII. PROCEDURE FOR SEARCH AND SEIZURE ETC. IN NARCOTIC DRUG OFFENCES

The Control of Narcotics Substance Act, 1997, contains both substantive as well as procedural law. The relevant sections referred to above are substantive provisions for crimes of illicit drug trafficking while Chapter-III of the Act, comprising of sections 20 to 35, deals with procedural matters including arrest, search, seizure, undercover and controlled delivery operations etc. Section 20 of the Act relates to the powers of the

¹ 2000 Pakistan Criminal Journal 1222.

² Section 2, (s), Narcotics Control Substance Act (Act No. XXV), 1997.

³ The Control of Narcotics Substance Act (Act XXV) of 1997.

Special Court constituted for the purpose under this Act to issue warrants for arrest of any person whom it has reason to believe committed an offence of illegal illicit drug trafficking etc. The power of the Special Court under this provision is to issue search warrants both during day- or night-time. The law under section 21 also empowers police officers not below the rank of Sub-Inspector to enter any building, place or premises etc. for the purpose of search and to effect seizure and arrest without any warrant, if he has knowledge or information that a controlled substance in respect of which an offence is punishable under the Act and that a warrant for arrest or search cannot be obtained against the suspect without affording him an opportunity for the concealment of evidence or to facilitate his escape. In such circumstances, he enters into the building, place, premises or conveyance and breaks open any door and removes any other obstacle to such entry in case of resistance and is empowered to seize such narcotic substances. However, such powers conferred on police officers by the Act are subject to certain conditions, as held by Special Court decisions. In one such case the honourable Court held that:

Search and seizure proceedings by obtaining a search warrant was a rule and exercise of unusual power to effect search without warrant was an exception. Conscious application of mind needed on part of officer to effect search or arrest without a warrant as to possibilities of escape or concealment of evidence on part of the offender. Provision of section 21, (2) of Control of Narcotics Substances Act, 1997 required that before or immediately after taking any action under section 21, (2) of the said Act, officer concerned must record grounds and the basis of his information and proposed action and forthwith send a copy thereof to his immediate superiors. Such safeguard was provided to prevent abuse of extraordinary powers.⁴

Section 24 of the Act also provides for undercover and controlled delivery operations. This provision is addressed below.

IX. UNDERCOVER AND CONTROLLED DELIVERY OPERATIONS

Section 24 of the Act deals with undercover and controlled delivery operations. This provision lays down that, subject to the conditions laid in the said section, the Federal Government may give approval in writing to controlled delivery operations, for the purpose of gathering evidence in Pakistan or elsewhere relating to the commission of any offence against this Act or similar law of a foreign state. The controlled delivery is carried out through properly designed operations to give opportunity to intending criminals engaged, or about to engage, in illicit drug trafficking to manifest that conduct or provide other evidence of it.

X. DISPOSAL OF PERSON ARRESTED IN ARTICLES SEIZED

Section 27 of the Act provides procedures for disposal of a person and articles seized. Under the said provision, persons arrested and articles seized have to be forwarded without delay to the Special Court having jurisdiction.

XI. PRESUMPTIONS OF INTENT IN TRAFFICKING AND POSSESSION OF ILLICIT ARTICLES ETC.

The law presumes under section 29 of the Act that whenever any narcotic drug, psychotropic substance or controlled substance, including cannabis, coca or opium poppy plant, is growing on any land cultivated by such persons, any apparatus designed or adopted for the production or manufacture of any narcotic drugs, psychotropic substance etc. for which such person fails to account satisfactorily is presumed to have committed an offence under the Act. However, the presumption laid down under this provision has been subjected to certain qualifications by the honourable Court, particularly in light of the fundamental rights of citizens provided under Article 14 of the Constitution.⁵

⁴ 1999 Pakistan Criminal Law Journal, 1033.

⁵ 2000 Pakistan Supreme Court Cases (Criminal) Supreme Court (Pak) 792.

XII. CONFISCATION OF ARTICLES AND PROCEEDS OF ILLICIT DRUG TRAFFICKING

Irrespective of whether an accused person is convicted or acquitted during trial of an offence, the Special Court has been empowered by section 33 of the Act to decide whether any article frozen or seized is liable to confiscation. Moreover, narcotic drug psychotropic substances are controlled substances that have to be disposed of under section 516 (a) of the Criminal Procedure Code.

XIII. LEGAL IMPEDIMENTS AND PRACTICAL CHALLENGES IN COMBATING ILLICIT DRUG TRAFFICKING

The clandestine nature and complexity involved in identifying, tracing and seizing of the proceeds of crime related to narcotic drugs, Law Enforcement Agencies are facing serious challenges in this regard. Due to the procedural technicalities involved in the trial of offenders, conviction of such criminals is also a challenge for Law Enforcement Agencies and the prosecution. The challenge is further aggravated by the ongoing Afghan war for the last four decades. The war has virtually turned Afghanistan into a global epicentre of poppy cultivation and narcotics production. Afghan drugs pose a serious social, political and security problem not only for Afghanistan itself but also for its neighbouring countries. Because Pakistan shares a common border of 2,611 kilometres with Afghanistan, Pakistan has thus become the major victim and major transit country for Afghan opiates and hashish.

XIV. CONCLUSION

Given that generally the motive behind illegal drug trafficking is to pursue financial gain, which not only generates substantial profits for organized criminal groups, the illegal profits remain the major source of funding of such criminal groups and their activities which in turn lead to the growth of their illegitimate business sphere. Resultantly, the profit earned through such businesses penetrates into the legally operated business sphere and eventually impairs integrity and stability of the economic and financial systems around the globe. The linkage between illegal drug trafficking and financing of international terrorism has made the issue more troubling for the entire global community. Therefore, more effective strategies need to be devised through inter-agency coordination both on the national and international levels. Moreover, applicable laws on the subject need to be reviewed and updated to cope with modern-day challenges in the field.