

The Treatment of Drug Offences in Sharia-Based Countries: The Case of Pakistan

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Abstract

The subject of drugs and narcotics trafficking has become a serious issue in contemporary Pakistan. The issue is of particular relevance to Pakistani nationals who once found refuge in the United States, but now face repatriation due to drug-related criminal offences that they committed while in the United States. Upon repatriation, these individuals face a double-edged sword, as they are not only bound by internationally recognized secular laws, they are also confronted with being re-tried for their crimes under Sharia, or Islamic Law. This paper specifically addresses the subject of drug offences under Sharia law in Pakistan, and the situation individuals convicted of drug-related crimes abroad face upon a return to Pakistan.

Overview of Pakistan

The Islamic Republic of Pakistan is located in southern Asia, and borders the Arabian Sea between India on the east, Iran and Afghanistan on the west, and China in the north. Pakistan is roughly the size of California doubled, and is densely populated with 193 million people. Ethnically, 44.68% of Pakistanis are Punjabi, 15.42% are Pashtun, 14.1% are Sindhi, 8.38% are Sariaqi, 7.57% are Muhajirs, and 3.57% are Balochi. Religiously, Pakistan's population is 96.4% Muslim; of which approximately 85-90% are Sunni, and 10-15% are Shi'a Muslim. The balance (3.6%) is comprised of several religious groups including Christians and Hindus.¹

Map of Pakistan



Literacy rates are low relative to the West, with 68.6% of the men being literate and only 40.3% of women.² Such low literacy rates result in a situation where many individuals depend on their religious leaders to help them navigate through life, taking their orders and adopting their worldviews. According to Pakistani professor Pervez Hoodbhoy, “Pakistan’s education system demands that Islam be understood as a complete code of life, and creates in the mind of the schoolchild a sense of siege and constant embattlement by stressing Islam is under threat everywhere.”³ As such, life is extremely difficult for anyone who lives outside the rigid confines of fundamentalist Islam.

¹ “Country Report on Pakistan,” Central Intelligence Agency World Fact Book. December 4, 2013. Accessed from: <https://www.cia.gov/library/publications/the-world-factbook/geos/pk.html>.

² Ibid.

³ Lisa Curtis, “Reviving Pakistan’s Pluralist Traditions to Fight Extremism,” *Backgrounder* 2268, The Heritage Foundation, May 4, 2009: www.heritage.org/Research/AsiaandthePacific/bg2268.cfm.

Crime also remains a problem in Pakistan. According to *Intelli-Briefs*, an agency that collects data on security conditions throughout the world, crime is increasing on a day-to-day basis throughout the country. According to their findings:

Overall crime rate in the country is today higher than what it was two years ago. Official figures prove that the overall crime rate, both at the Centre and in all the provinces, has increased despite tall claims made by the present federal or provincial rulers. Official figures show that during 2006-07, countrywide crimes included a total of 20,082 cases of murder, which increased to 24,036 in 2008 and 2009. Rape/*zina* cases registered in 2006-07 were 4,300 as against 5,712 in 2008-09. There were 19,909 kidnapping cases in 2006-07, but this crime rose to 29,602 in 2008 and 2009. The crime of kidnapping for ransom, which has become a business owing to governments' apathy, also saw a rise from 569 in 2006-07 to 1,058 in 2008-09.⁴

The U.S. Department of State specifically warns against Americans from traveling to Pakistan, as criminals often target Westerners for theft, kidnapping for ransom, and in anti-Western protests.⁵

Treatment of Drugs in Sharia and Under the Law in Pakistan

To understand the treatment of someone that has been convicted of drug-related crimes in the United States and is being considered to be deported to Pakistan, it is important to come to a deeper understanding of the issue of drugs and its treatment under decidedly Islamic-oriented states such as Pakistan. First, a discussion of Sharia is in order.

In Muslim-dominant countries such as Pakistan, society is largely governed by the Sharia. In the West today, the use of the term Sharia is often loosely defined as "Islamic Law." While this is true to some extent, Sharia actually encompasses much more. Noah Feldman, professor of Law at Harvard University explains,

"Although it is commonplace to use the word 'Sharia' and the phrase 'Islamic law' interchangeably, this prosaic English translation does not capture the full set of associations that the term 'Sharia' conjures for the believer. Sharia, properly understood, is not just a set of legal rules. To believing Muslims, it is something deeper and higher, infused with moral and metaphysical purpose. At its core, Sharia represents the idea that all human beings — and all human governments — are subject to justice under the law. In fact, 'Sharia' is not the word traditionally used in Arabic to refer to the processes of Islamic legal reasoning or the rulings produced through it: that word is *fiqh*, meaning something like Islamic jurisprudence."⁶

Put another way, Jillian Schwelder, professor of political science at City University in New York, defines Sharia as a system that is more akin to a set of guiding principles derived from the Holy Quran and the Sunna. Schwelder adds that Islamic scholars, often referred to as jurists, are responsible for interpreting the holy texts, and issuing judgments based on their understanding of Sharia.⁷

In recent years, Sharia has been a major source of discussion and debate among those studying the Muslim world and its affect on governance and human rights. More often than not, Sharia is treated as an impediment to human rights, and in particular, women's rights. Professor Feldman continues:

Some rules associated with Sharia are undoubtedly old-fashioned and harsh. Men and women are treated unequally, for example, by making it hard for women to initiate divorce without forfeiting alimony. The prohibition on sodomy, though historically often unenforced, makes recognition of same-sex relationships difficult to contemplate. But Sharia also prohibits bribery or special favors in court. It demands equal treatment for rich and poor. It condemns the vigilante-style honor killings that still occur in some Middle Eastern countries. And it protects everyone's property — including women's — from being taken from them. Unlike in Iran, where wearing a head scarf is legally mandated and enforced by special religious police, the Islamist view in most other Muslim countries is that the head scarf is one way of implementing the religious duty to dress modestly — a desirable social norm, not an enforceable legal rule.

⁴ "Pakistan: crime rate jumps up in two years," *Intelli-Brief*, March 14, 2010:

<http://intellibriefs.blogspot.com/2010/03/pakistan-crime-rate-jumps-up-in-two.html>.

⁵ "Travel Warning for Pakistan," Issued on September 6, 2013 by the U.S. Department of State:

http://travel.state.gov/travel/cis_pa_tw/tw/tw_6064.html.

⁶ Noah Feldman, "Why Sharia" Council on Foreign Relations:

⁷ "Religion and Politics," Jillian Schwelder, *Politics and Society in the Contemporary Middle East*, Michelle PennerAngrist, ed. (Lynne Rienner, Boulder: 2013) p., 125.

And mandating capital punishment for apostasy is not on the agenda of most elected Islamists. For many Muslims today, living in corrupt autocracies, the call for Sharia is not a call for sexism, obscurantism or savage punishment but for an Islamic version of what the West considers its most prized principle of political justice: the rule of law.⁸

In terms of the rule of law, we can turn our attention to the treatment of drugs under Sharia. First, it must be noted that Islam strictly prohibits Muslims from the use of drugs and other intoxicants such as alcohol. Their use is tantamount to sinning against God. According to the Holy Quran, which as mentioned, is the basis of Sharia:

O You who believe! Intoxicants and gambling, (dedication of) stones and (divination by) arrows are an abomination of Satan's handiwork. Avoid (such abominations) that you may prosper. (5:90)⁹ And:

*Satan's plan is to sow hatred and enmity amongst you with intoxicants and gambling, and to hamper you from the remembrance of Allah and from prayer. Will you not give up? (5:91)*¹⁰

Furthermore, according to the *Hadith*, a collection of the words and actions of the Prophet Muhammad, "Every intoxicant is *khamr* (wine) and every intoxicant is *haram* (unlawful)." In another *Hadith*, the Prophet deems intoxicants and partaking in them as:

1. The key to all evils.
2. The head of all errors and lapses.
3. The most terrible of major sins.
4. The mother of all atrocities.
5. The mother of all evils.

The significance of the above passages cannot be underestimated, and they are included in this paper for a specific reason in relation to someone who is considered to be deported to Pakistan. In the West, where jurisprudence is grounded in a secularist understanding of rationality, we sometimes neglect to take into serious consideration the influence that religion has on governance in other parts of the world. When dealing with cultures bound—both individually and collectively—by a mystical truth superseding any "worldly" truth that can be imposed by a secular government, certain theological nuances must be observed. In states such as Pakistan, Islam is *holistic*, in the most literal sense of the word. The universality of Islam and its teachings, therefore, not only dictates personal behavior, it is also instinctively translated into the rule of the community. As Abdulaziz Sachedina, Chair of Islamic Studies at George Mason University explains, "Of all the world religions, Islam, with its comprehensive doctrine to institute good and prevent evil, is most identified with attempts to govern human life in all its manifestations in this world and the next."¹¹ This is why we see behaviors deemed as morally abhorrent for the individual (for example; homosexuality, and drug and alcohol use) are penalized by the state. In essence, moral codes provide the foundation for the penal codes, and the two are inextricable.

In Pakistan, crimes that are deemed as an offence to Islam including blasphemy, apostasy, adultery, and drug trafficking all carry heavy penalties, including imprisonment and death. It should be noted that in Pakistan, trafficking of more than a kilogram of a drug is punishable by death, and the sale of adulterated drugs (not for medical purposes) carry lengthy prison sentences. Further, such offences committed by a Pakistani national, even if the crime was committed outside Pakistani borders, can be tried under Pakistani courts. According to Chapter I, Article III of the Pakistani Penal Code (Act XLV of the Code of 1860), "Any person liable, by any Pakistan Law, to be tried for an offence committed beyond Pakistan shall be dealt with according to the provision of this Code for any act committed beyond Pakistan in the same manner as if such act had been committed within Pakistan."¹² Article III is of significant importance to the issue of drug trafficking, as trafficking frequently involves the sale of contraband across borders.

⁸ Feldman, "Why Sharia."

⁹ Surat Al-Ma'idah verse 90 Quran.com <http://quran.com/5/90>

¹⁰ Surat Al-Ma'idah verse 91 Quran.com <http://quran.com/5/91>

¹¹ Abdulaziz Sachedina, *Islam and the Challenge of Human Rights* (Oxford: Oxford University Press, 2009), p. 45.

¹² Pakistan Penal Code (Act XLV, 1860), Chapter 1, Article III; available at: <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>.

The issue of drugs and narcotics trafficking has become a serious issue in Pakistan, and leaders have made vows to eliminate the use and sale of drugs throughout the country. In 2010, then Prime Minister, Syed Gilani, stepped up the powers of the Anti-Narcotics Task Force (ANTF), and declared to eradicate the “menace of drugs,” and that “These criminals deserve no sympathy and have to be brought to book under any circumstances.”¹³ During the ensuing years, more and more people accused of drug trafficking have been arrested, imprisoned, and sentenced to the death penalty. According to a report by *The Guardian*, over 8,000 individuals remain on death row in Pakistan, many of which are accused of drug smuggling. The report adds that several individuals that have been convicted are not even citizens of Pakistan, stating that, “At least 25 Britons are in jail in Pakistan facing a potential death penalty, according to the human rights group Reprieve, which bases its figures on a briefing from the Foreign Office. Two have been convicted and sentenced to death. The most high-profile Briton facing the death penalty is Khadija Shah from Birmingham, who is imprisoned in Adiala jail with her two-month-old baby. Shah was arrested at Islamabad airport in Pakistan earlier this year with 140lb of heroin. According to Reprieve, her jail is known for its dangerously “unhygienic conditions” and has recently suffered an outbreak of deadly tuberculosis.”¹⁴

While the death penalty is at the extreme end of the abuses accused criminals face, they also face acts of physical abuse and torture in Pakistani detention facilities throughout the country. According to the Asian Human Rights Commission, torture in custody is a serious problem affecting the rule of law in Pakistan. It is used as the most common means to obtain confession statements. As yet, there has been no serious effort by the government to make torture a crime in the country. It provides impunity to the perpetrators who are mostly either policemen or members of the armed forces. Furthermore, there is no means for the protection of witnesses. This discourages victims from making complaints. While the international jurisprudence on the issue has evolved into very high standards, the situation in Pakistan resembles the Stone Age. In spite of the prohibition of torture in the constitution, the Pakistan Army is running detention and torture cells in almost every city in the country. The Asian Human Rights Commission in a [report](#) has identified 52 such detention centres that are run by the military, where people who were arrested and disappeared are kept incommunicado and tortured for several months to extract the confession statements.¹⁵

And according to Amnesty International’s most recent findings, “Security forces continued to act with impunity and were accused of widespread human rights violations, including arbitrary arrests, enforced disappearances, torture, deaths in custody and extrajudicial executions.”¹⁶ Other studies have also pointed to the abuses individuals accused of “moral crimes” face, including sex workers and drug users. According to a report released last year by the *Journal of Pakistan Medical Association*, “Most disturbing in both qualitative and survey findings was the extent of abuse and complicity by state actors, particularly police... The IDUs (intravenous drug users) were the most powerless group with no wealth, little autonomy and therefore little possibility of placating the police. The qualitative interviews showed the extreme lengths to which some would go to avoid arrest and incarceration.”

The report adds that drug users not only face abuses at the hands of the police and the state, but also by society at large, including shunning and abuse from family members. “IDUs reported more verbal and psychological abuse than sexual or physical and expressed similar concerns to Khotkis (sex workers) about discrimination from family and society” For example, “IDU’s sister is getting married then his family members will ask him to stay away from other guests in the function so that the others might not get the impression that the bride’s brother is an IDU ... He feels - I cannot express his feelings in words; he sheds blood tears.” Among IDUs there was a strong tendency to self-blame: “[An IDU] is deprived of many rights because of his own mistakes.”

¹³ “Curbing Drug Trafficking, addiction Requires Stern Measures: Prime Minister,” Associated Press of Pakistan, February 3, 2010: http://www.app.com.pk/en/_/index.php?option=com_content&task=view&id=95658&Itemid=38.

¹⁴ Pakistan Risks UK Anti-Drug Money as Hangings of Traffickers Resume,” *The Guardian*, November 17, 2012: <http://www.theguardian.com/world/2012/nov/18/pakistan-drugs-aid-death-penalty>.

¹⁵ “Torture in Pakistan,” Asian Human Rights Commission: <http://www.humanrights.asia/countries/pakistan/torture-in-pakistan>.

¹⁶ “Pakistan,” Amnesty International 2013 World Report on the State of the World’s Human Rights: <http://www.amnesty.org/en/region/pakistan/report-2013>.

Many faced severe ostracism, including lack of trust from their families even if they try to stop injecting drugs, which led to widespread mental health problems manifest in feelings of extreme self-hate and a deepening of addiction in an attempt to escape: “I refrained from taking drugs for two years but still my family members didn't believe me. Then I got tired and tried to hang myself three times.”

The study published by the *Journal of Pakistan Medical Association* helps us to understand how individual codes of morality are reproduced in the public sphere, where the need to punish perceived moral deviants is a reflection of society's system of rationality grounded in religious instruction. First, from the ground up, drug users (and others that fall under the category of deviants) are treated as social pariahs with very real socioeconomic consequences for their actions. Moreover, by committing moral infractions, these same individuals also face state-sanctioned discrimination and face suffering the most extreme forms of violence, including torture and death. In essence, their punishment is as holistic as the theological system that supports it, which is determined to hold individuals legally accountable for their “immoral” actions. Punishment is thus dually carried out on the individual level (family and social networks, through ostracism) as well as in the public realm (courts and prisons, through the use of torture and execution).

Given this reality, one who is considered to be deported to Pakistan with a drug conviction is indeed faced with extreme dangers and overwhelming obstacles. Having been arrested for drug-related infractions both in Pakistan and or in the United States, one would inevitably face incarceration and severe punishment at the hands of the government. Even if he is somehow able to avoid such punishment (an unlikely proposition) he faces returning to a society that deems him as an affront to Islam and its followers. From a sociological perspective, given the fact that the teaching of Islam permeates all facets of daily life, a person returning to Pakistan with a drug conviction will find it exceedingly difficult to function as an individual amongst a community that will thoroughly condemn him for his actions. Without question, economic opportunities (for which he or she will need to survive) and social interaction (for which, as a human being, is a necessity of life) will be severely limited. When we also take into account that one who returns to Pakistan from the United States—the perceived enemy— will likely invite violence from groups, such as the Taliban, who regard themselves as the protectors of morality; the situation will become not merely dangerous, but catastrophic.