Jurisdictional Exclusivity and Double Jeopardy in Narcotics Prosecutions: Interplay Between the CNSA, 1997 and the Customs Act, 1969

Brief overview

The **Customs Act, 1969** and the **CNSA, 1997** both criminalize the unauthorized import or export of narcotics. Vide **SROs 491(I)/1985** and **566(I)/2005**, narcotics and psychotropic substances were notified as prohibited goods under the Customs Act, thereby falling within the definition of "smuggling" under Section 2(s).

However, with the enactment of the **Control of Narcotic Substances Act, 1997**, Parliament has created a comprehensive penal regime covering the possession, import, export, transport, and trafficking of narcotic and psychotropic substances.

Section 72 of the CNSA deems its prohibitions to be those under the Customs Act for enforcement purposes, **but expressly ousts the jurisdiction of any other Court**, including the Customs Court, by its **first proviso** beginning with a **non obstante clause**.

Section 74 further affirms that the offender may still be punished under the CNSA even if the act constitutes an offence under any other law. The **overriding character** of this section displaces conflicting statutes to the extent of inconsistency.

Additionally, **Section 76 CNSA** mandates that **all offences under the Act shall be tried only by a Special Court constituted under the Act**.

In parallel, **Section 185-B**, inserted into the **Customs Act** through the **Finance Act, 2014**, contains a similar non obstante clause **expressly excluding Customs Courts** from trying offences related to narcotic and psychotropic substances. This reinforces the forum exclusivity envisaged by the CNSA.

The Supreme Court, in The State through Collector of Customs v. Nasim Amin Butt (2001 SCMR 1083), categorically held that prosecution of a narcotics offence under the Customs Act before a Customs Court was coram non judice, and only CNS Courts have jurisdiction.

More recently, in Dawood-Ur-Rehman v. The State (2022 PTD 1611), the Sindh High Court held that offences involving drugs like ketamine (included via SRO in Schedule III CNS Rules) fall exclusively under the CNSA, even if committed in the course of smuggling.

Thus, while customs officers may lawfully arrest and investigate narcotics cases under the **second proviso to Section 72 CNSA**, **trial and cognizance must occur before a Special Court under the CNSA**.

In view of the express language of Sections 72, 74, and 76 of the Control of Narcotic Substances Act, 1997, read with Section 185-B of the Customs Act, 1969, and the settled law laid down in 2001 SCMR 1083 and 2022 PTD 1611, can safely be concluded that all offences involving narcotic drugs, psychotropic substances, or controlled substances—**whether of foreign or local origin**—are triable exclusively by the Special Court established under the CNSA, 1997. The Customs Court has no jurisdiction to try such offences. The role of customs officers is limited to arrest and investigation, and does not confer trial jurisdiction under the Customs Act.

RESEARCH CENTER, HIGH COURT OF BALOCHISTAN

COURT: HON'BLE MR. JUSTICE SHOUKAT ALI RAKHSHANI
SUBJECT: CRIMINAL LAW
DATE: 05TH AUGUST 2025.
BY: WASEEM AHMED RAEES, IZAR AHMED LONGOVE & MARIA RESEARCH OFFICER

Background of the Case: *On 19-05-2025, officials of the Field Enforcement Unit Yaroo intercepted a near Yaroo checkpoint and recovered five boxes containing Crystal/Ice (Methamphetamine) concealed under the seats. The accused, unable to justify the possession, were arrested on the spot, and an FIR was lodged under the Customs Act and the Control of Narcotic Substances Act, 1997.*

Jurisdictional Dilemma Faced by the Accused: *The accused applied for bail to the Special Judge (Custom) and Special Judge CNS but both the Courts returned his bail applications for want of subject matter jurisdiction. Therefore, the accused filed bail application before the Hon'ble High Court.*

Core Query presented:

Where narcotic or psychotropic substances of foreign origin are seized, does the jurisdiction to prosecute such offences lie exclusively with the Special Court established under the Control of Narcotic Substances Act, 1997, or can such matters be validly tried by the Special Court constituted under the Customs Act, 1969?

Subsidiary Query:

Whether prosecution under the CNSA, 1997, after a prior conviction or acquittal under the Customs Act, 1969, for the same import/export of narcotic substances, is barred by the doctrine of autrefois acquit or autrefois convict?

Response to the Core Query

Legislative Framework:

Before delving into the *jurisdictional question*, it is essential to outline the statutory landscape that ***governs the import and export of narcotics in Pakistan***. The historical evolution of statutory framework reveals that after independence in 1947, the Sea Customs Act, 1878 and Land Custom Act 1924 continued to provide the legal framework for customs operations in Pakistan. Recognizing the need for modern legislation, the Parliament promulgated the **Customs Act, 1969.** The statute was primarily *enacted to regulate and control the import and export of goods, prevent smuggling, and safeguard the fiscal and economic interests of the State*. Thus, its *purpose is essentially regulatory* and *revenue-oriented*, though it criminalizes acts prejudicial to the State's trade and economic regime. Section 2(s) defines ***"smuggling"*** to mean the bringing into or taking out of Pakistan any goods in breach of a prohibition or restriction for the time being in force, or evading the payment of duties or taxes leviable thereon. The Act expressly prohibits the import into, export from, transport within, or transshipment of certain specified goods, and empowers the Federal Government to add further items to this list through notification. In exercise of this power, the Government, initially vide S.R.O. No. 491(I)/85 dated 03rd may 1985 and subsequently through S.R.O. 566(I)/2005 dated 6th June, 2005 declared narcotics and psychotropic substances to be goods whose import and export are prohibited under the Customs Act. ***This legislative step brought narcotics within the statutory ambit of "smuggling," thereby subjecting them to customs control and enforcement mechanisms even prior to the enactment of the CNSA, 1997.***

On the narcotics control side, Pakistan's legislative framework has evolved significantly over time. Earlier, the field was governed by colonial-era enactments such as the **Opium Act, 1857**, the **Opium Act, 1878**, and the **Dangerous Drugs Act, 1930**. These statutes primarily focused on controlling the cultivation, manufacture, and sale of opium and certain other drugs, reflecting the policy priorities of their era. In the mid-1990s, further ordinances were introduced to address the growing problem of narcotics trafficking, namely the **Control of Narcotics Substances Ordinance, 1997 (XLII of 1997)**. Recognizing the need to consolidate, modernize, and strengthen the legal framework, Parliament enacted the **Control of Narcotic Substances Act, 1997 (CNSA)**, which remains in force today as a special penal statute to consolidate laws relating to the production, possession, transportation, trafficking, and ***international movement of narcotic drugs***, ***psychotropic substances***, ***and controlled substance***, in fulfilment of Pakistan's domestic policy and international treaty obligations[1]. Importantly, the CNSA contains express provisions making the **import, export, transport, or transshipment** of narcotics, psychotropic substances, or controlled substances a criminal offence. ***Section 7 prohibits importing into, or exporting from, Pakistan any such substances except under lawful licence or authorization. These prohibitions in Section 7 of the CNSA are at par with the prohibitions contained in Section 2(s) of the Customs Act, 1969, under which "smuggling" includes the import or export of narcotics in breach of law***.

Overlapping Offences and Interpretive Principles for Resolving Conflict

In criminal jurisprudence, it is recognized that a single act may amount to multiple offences under different statutes, a concept often termed as ***overlapping***

[1] ***Challenges and Reforms in Pakistan's Narcotics Law: A Critical Analysis of the Control of Narcotics Substances Act 1997: Jibran Jamshed & Faiz Bakhsh***

offenses or ***double or multiple liability***. For instance, the smuggling of narcotics of foreign origin simultaneously violates prohibitions under the Customs Act (for unlawful import/export) and the CNS Act (for possession, trafficking, or transport, import or export of prohibited substances). The general principle codified in **Section 26 of the General Clauses Act, 1897** permits prosecution of an act under any of the statutes it offends, but it prohibits double punishment for the same offence. ***The issue, therefore, is not whether both laws apply — which they do — but which forum is competent to try the offence when legislative provisions appear to overlap.*** Generally, maxim ***lex specialis derogat legi generali*** *(Special law prevails over a general one in case of conflict)* is an accepted technique of interpretation and resolution of conflicts between special law and general law. As recognized, this rule operates where two applicable laws - one general and one specific - regulate the same subject matter. In such cases, the more specialized law is accorded precedence, not due to inherent superiority, but because it's tailored provisions are presumed to reflect the legislator's intent to create a targeted exception to the general rule[2]. Critically, *lex specialis* does not invalidate the general law but suspends its application *pro tanto* where the special regime operates. The principle thus preserves legislative coherence while preventing contradictory outcomes - a function particularly salient in criminal law, where it safeguards against double jeopardy[3].

Howbeit, where the two conflicting laws are ***both special statutes,*** as in the case of the Customs Act and the CNSA, the interpretative focus shifts from ***lex specialis*** to the maxim ***lex posterior derogat priori*** — that a later enactment prevails over an earlier one to the extent of inconsistency[4], also well known in our jurisprudence as ***doctrine of implied repeal***[5]. Rooted in Roman law and later codified in modern jurisprudence, *lex posterior* presumes *that the legislature's most recent expression of intent supersedes prior contradictory provisions.* This principle avoids legislative stagnation while ensuring coherence, as later laws are deemed to account for and deliberately depart from earlier frameworks. Unlike *lex specialis*, which harmonizes

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[2] *Lex Superior, Lex Specialis, Lex Posterio: Erich Vranes*.

[3] (The *Lex Specialis* Principle and its Uses in Legal Argumentation. An Analytical Inquire Silvia Zorzetto *University of Milan* zorzetto@fildir.unimi.it*)*.

[4] *Muhammad Muhsan Ghuman vs Government of Punjab through Home Secretary , Lahore and others* (2013 SCMR 85)

[5] *Federal Government Employees Housing Foundation (FGEHF), Islamabad and others vs. Malik Ghulam Mustafa & and others* (2021 SCMR 201)

general and specific laws, *lex posterior* resolves tensions between equally specialized regimes by prioritizing temporal legislative intent[6].

*However, where law contains an **overriding provision, the legislative intent may be to confer exclusive jurisdiction upon a particular forum, notwithstanding any concurrent applicability of other special laws.*** An express derogation clause, often introduced by the phrase *"notwithstanding anything contained in…,"* is known in legal drafting as a ***non obstante clause***. Inherent in this formulation is a legislative command that the provision in which it appears shall prevail despite anything inconsistent in the provisions referred to in the clause[7]. The *non obstante clause* is a deliberate drafting device, employed by the legislature to make its intention unambiguous, avoid conflict, and ensure the primacy of a particular provision or enactment over all other provisions to which it refers. The effect of such a clause is that, where there is inconsistency between the non obstante provision and another statutory provision, whether in the same enactment or in another, the non obstante provision prevails to the extent of the inconsistency. ***Where such a clause is embedded in a later special statute, it may have the effect of suspending or excluding the operation of earlier special or general laws within its field, thereby conferring exclusive jurisdiction on the forum designated by the later enactment***[8].

This legislative intent finds explicit expression in the **Control of Narcotic Substances Act, 1997**, which contains a carefully structured set of provisions to ensure its primacy over other laws within its field. **Sections 72, 74, and 76**, which, read together, both incorporate certain prohibitions of the Customs Act or other Courts and, through overriding language, confer exclusive trial jurisdiction upon the Special Courts established under the CNSA. A close examination of these provisions, particularly section 72 of the CNSA is necessary to appreciate the manner in which Parliament has expressly subordinated the operation of the Customs Act in matters relating to narcotic drugs, psychotropic substances, and controlled substances[9].

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[6] (*Lex posterior derogat priori, lex specialis derogat generali: Jean-Louis Halpérin Professor at École Normale Supérieure, Paris, and affiliated with the CNR & published in the Legal History Review*

[7] (*Syed Mushahid Hussain and others vs. Federal Investment Agency and others* **(2017 SCMR 1218)**

[8] *The use and scope of 'non obstante clause' in statutes By: Javaid Akhter published in PLJ*

[9] (*John Bernard Sender v. The State* **(PLD 2004 Karachi 136)**

Section 72 of the Control of Narcotic Substances Act, 1997, embodies a legislative device intended to harmonize the enforcement mechanisms of the Customs Act, 1969 with the substantive penal framework of the CNSA. The opening portion of the provision stipulates that all prohibitions and restrictions imposed by or under the CNSA on the import, export, and transshipment of narcotic drugs, psychotropic substances, or controlled substances shall be deemed to be prohibitions and restrictions imposed under the Customs Act, 1969. This legal fiction serves to operationally align the administrative and procedural powers of the customs authorities with offences relating to narcotics under the CNSA, thereby empowering customs officials to intercept and seize prohibited substances at ports, borders, and other transit points, using the procedural tools available under the Customs Act. However, ***the first proviso to Section 72 categorically declares that notwithstanding anything contained in the Customs Act or any other law for the time being in force, all offences relating to narcotic drugs, psychotropic substances, or controlled substances shall be tried exclusively under the provisions of the CNSA.*** The phrase "notwithstanding anything" clearly overrides conflicting provisions in other enactments, including the Customs Act, and unequivocally ousts the jurisdiction of the Customs Court in such matters.

Furthermore, the second proviso recognizes the practical reality that customs officers may, in the ordinary course of duty, apprehend individuals involved in the trafficking or smuggling of narcotics. To this end, it empowers such officers to carry out inquiry and investigation in the same manner as officers authorized under the CNSA. This ensures continuity in the enforcement process, while maintaining the statutory scheme that prosecution and trial of such offences must occur strictly within the framework of the CNSA and before a Special Court constituted thereunder.

The import of Section 72 is clear: the trial of all offences relating to narcotic drugs — even if they also constitute offences under the Customs Act — lies exclusively under the CNS Act. The role of customs officers, in such cases, is confined to arrest and investigation; their acts are deemed valid for purposes of the CNS Act, but they do not alter the forum of trial. This construction is reinforced by *Section 74* ***of the CNS Act, which grants the Act overriding effect notwithstanding anything inconsistent therewith in any other law, and Section 76, which provides that offences under the Act shall be tried only by the Special Courts established thereunder.***

On the other side, the insertion of **Section 185-B** into the Customs Act, 1969 through the Amendment in the year 2014[10] further clarifies the legislative intent by imposing a statutory bar upon the jurisdiction of the Special Court (Customs, Taxation and Anti-Smuggling) to try offences relating to narcotic drugs and psychotropic substances. For ease of reference the section ibid is reproduced as under:-

> **"185-B. Special Judge, etc. to have exclusive jurisdiction.-** *Notwithstanding anything contained in this Act or in any other law for the time being in force-*
> *(a) No court other than the Special Judge having jurisdiction shall try an offense punishable under this Act,* ***<u>except the offense relating to narcotics and narcotic substances which shall be tried by the Special Courts established under the Control of Narcotics Substance Act 1997 (XXV of</u>*** *1997).*
> *(b) …………………………………………………………………….*
> *(c) ……………………………………………………………………..*
> *(d) …………………………………………………………………….*

This amendment reinforces and aligns with the overriding scheme of the CNS Act, unequivocally confirming that such matters are to be tried exclusively by the Special Court constituted under the CNS Act.

<u>Judicial interpretation and case law</u>

Our jurisprudence has also settled the matter. In case of *Nasim Amin Butt*[11]. The Hon'ble Supreme Court of Pakistan held that the combined reading of the relevant provisions of both enactments establishes that offences connected with narcotics are triable only under the CNS Act in the following terms: -

> *"10. As has already been observed under the proviso to section 72 of Act I XXV of1997,, all offences relating to narcotic drugs, psychotropic substances or controlled substances; etc., are to be tried under this Act notwithstanding anything contained in the Customs Act, 1969 or any other law, therefore,* ***<u>the Special Courts created under this Act had the exclusive jurisdiction to try these offences to the exclusion of any other Court under any law inclusive of the Customs Act,</u>*** *therefore, the prosecution of the respondents under the Customs Act was without jurisdiction and the proceedings taken thereunder, conviction recorded and sentence awarded were also illegal having been taken, recorded and passed by a Court which was not vested with jurisdiction to proceed with the matter, as such, all these. proceedings from the very inception were coram non judice, therefore, the quashment of the prosecution under Act XXV of 1997 in relation to conviction recorded and sentence passed by a Court under the Customs Act which was not vested with the jurisdiction to proceed in the matter Was not justified."*

Off late, the Hon'ble Sindh High Court, Dawood-ur-Rehman case[12] applied these principles to a case involving ***ketamine of foreign origin*** concealed in goods meant

[10] ***Finance Act, 2014***
[11] *The State through Collector of Customs v. Nasim Amin Butt* **(2001 SCMR 1083)**,
[12] *Dawood-Ur-Rehman vs. the state* **(*2022 P.T.D. 1611)***

for export. It held that by virtue of the 2020 S.R.O. classifying ketamine as a psychotropic substance under Schedule III of the CNS Rules, the offence fell within the exclusive domain of the CNS Act. The Court concluded that--

> *"4. We have heard the parties and perused the record. It is apparent that by virtue of an amendment vide SRO dated 6.4.2020, Ketamine and Ketamine Hydrochloride Salt along with its chemical formula have been included in the list of psychotropic substances given in Schedule-III of CNS Act, 1997 (CNS, Rules, 2001). Per sections 6 and 7 of CNS, Act 1997 production, manufacture, possession, transport, import and export into Pakistan, transship etc. of any psychotropic drug, save in accordance with law, is an offence triable exclusively under the said Act. <u>Further, section 72 of CNS Act, 1997 envisages that prohibition and restriction imposed under this Act on import, export etc. of narcotic drug, psychotropic substance, etc. shall be deemed to be prohibitions and restrictions imposed under the Customs Act 1969, and the provisions of this Act shall apply. In the first proviso thereto, it is stipulated that notwithstanding anything contained in any law including the Customs Act, 1969, all the offences relating to narcotic drug, etc. shall be tried under the provision of this Act. The second proviso, which appears to be aimed at meeting any investigation related exigency in this regard, elucidates that where an Officer of Customs apprehends a person involved in any such offence, he shall be empowered to carry out inquiry or investigation in the manner as an officer authorized under this Act. That means that if an offense of smuggling in terms of Customs Act, 1969 has been committed in respect of any narcotic drug, etc. the scheme under CNS Act, 1997 would come into play and the accused would be dealt with under the provisions of this Act. The arrest and investigation by an officer not strictly authorized by this Act would stand legitimized as have been done by an officer under this Act. And likewise the outcome of such investigation for conducting a trial would be the subject matter of this Act and would be looked into by a Court established under this Act. This view is further accentuated from a combined reading of sections 74 and 76 of CNS Act, 1997 which jointly provide an overriding character of CNS Act, 1997 in the matters of punishment to an accused involved in narcotics cases and applicability of its provisions notwithstanding anything contained in any other law.</u> It shall therefore definitively follow that even in the face of any conflict between provisions of this Act and other laws criminalizing an action, its consequence, and the medium to deliver or enforce it provisions of this Act shall prevail over the other law."*

<u>Conclusion and Answer to the Query</u>

Accordingly, where narcotics of foreign origin are recovered within Pakistan, the act constitutes an offence under both the Customs Act and the CNS Act. Nonetheless, by reason of the overriding clauses in Sections 72, 74, and 76 of the CNS Act, read with Section 185-B of the Customs Act, *the **exclusive jurisdiction to try the case vests in the Special Court established under the CNS Act, 1997***. The investigation may be lawfully undertaken by customs authorities in terms of the second proviso to Section 72, but the cognizance and trial fall solely within the competence of the CNS Special Court.

Subsidiary Query:

Whether prosecution under the CNSA, 1997, after a prior conviction or acquittal under the Customs Act, 1969, for the same import/export of narcotic substances, is barred by the doctrine of autrefois acquit or autrefois convict?

Response to the Subsidiary Query

The constitutional, statutory, and common law protection against being tried or punished more than once for the ***same offence*** is firmly embedded in Pakistan's legal system. It is founded on the maxim ***nemo debet bis vexari pro una et eadem causa***, meaning that no person should be twice vexed for the same cause, and is manifested through Article 13(a) of the Constitution, Section 403 of the Code of Criminal Procedure, 1898, and Section 26 of the General Clauses Act, 1897. These provisions preserve the pleas of *autrefois acquit* (formerly acquitted) and *autrefois convict* (formerly convicted), which bar a subsequent trial where an accused has already been tried by a competent court on the same facts, irrespective of whether the result was conviction or acquittal. While Section 26 permits prosecution under any one of multiple applicable enactments, it explicitly prohibits double punishment for the same offence, and Section 403 Cr.P.C. extends this protection to any other offence arising from the same facts that could have been charged in the earlier proceedings.

For the doctrine to apply, certain prerequisites must exist: *there must have been a prior trial before a court of* ***competent jurisdiction***; *it must have resulted in a conviction or acquittal*; *the parties in both proceedings must be the same*; *the facts in issue must be identical or substantially the same*; *the evidence required for the later charge must have been sufficient for conviction in the earlier trial*; *the offence must have been committed at the time of the first charge*; and *the earlier adjudication must have been valid and subsisting at the time of the second trial*. Where these conditions are fulfilled, the law prohibits re-agitation of the same factual allegations, even under a different statute, as this would amount to double jeopardy.[13]

As an act of import or export of narcotic substances is an offense under both the Customs Act, 1969, and the Control of Narcotic Substances Act, 1997 (CNSA), the question arises if someone is once tried, either convicted or acquitted, under the Custom Act, can second trial under the CNSA is barred by the doctrines of *autrefois*

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[13] ***Abdul Malik v. The State (*PLD 2006 SC 365)** and ***Nazir Ahmed v. Capital City Police Officer (*2011 SCMR 484**

acquit or *autrefois convict* or double jeopardy. As per the settled principle earlier such prosecution under the Customs Act would be without lawful jurisdiction, as in the case of offences relating to narcotic drugs, psychotropic substances, or controlled substances, section 72 of the CNSA r/w section 185-B of the Custom Act confer exclusive jurisdiction on the Special Courts established under that CNSA, overriding the Customs Act and any other law; therefore, *proceedings before a Customs Court in such matters are* coram non judice*, rendering any conviction or acquittal a nullity in the eyes of law. Since a void conviction or acquittal does not amount to a valid prior adjudication by a court of competent jurisdiction, it cannot trigger the bar of double jeopardy. In such circumstances, the subsequent prosecution under the CNSA is not only permissible but is the only valid legal course.* The August Supreme Court in case ***State through Collector of Custom vs Nasim Amin Butt and others*** **(2001 SCMR 1083)** has affirmed that in narcotics cases, the Customs Act may provide enforcement powers, but trial jurisdiction is vested solely in CNSA Special Courts, and any earlier customs conviction in such matters is liable to be quashed, with the trial proceeding afresh under the CNSA. The following excerpt is relevant, therefore, reproduced:

> *"The combined effect of reading of the provisions of sections 6, 7, 8, 72, 73 and 74 of Act XXV of 1997 and the Customs Act, 1969 is that an offence connected with narcotics could be tried only under the provisions of this Act in. a Court established thereunder to the exclusion of the Courts established under any other law but the Court was empowered to invoke the provisions of other laws prescribing greater punishments or prohibitions on the date of commission of offence while awarding the sentence to the accused.*
>
> *15. For the foregoing reasons, we hereby declare that the trial of the respondents undersection 156(1)(8) of the Customs Act in the Court of Special Judge, Customs and the proceedings taken under the said Act, conviction recorded. against them thereunder and sentence awarded to them were without lawful authority and of no legal effect and are quashed.?*

Pertinently, section 74, read together with Sections 72 and 76 of the CNSA and Section 185-B of the Customs Act, makes it abundantly clear that only Special Courts constituted under the CNSA have the jurisdiction to try offences involving narcotic drugs and psychotropic substances. Therefore, if an accused is tried under the Customs Act for an offence that falls exclusively within the domain of the CNSA, such a trial is **coram non judice**—i.e., by a court lacking lawful jurisdiction.

Accordingly, section 74 operates to ***preserve the prosecutorial viability under the CNSA,*** even where another law has been erroneously applied, by affirming the overriding applicability of the CNSA in cases involving narcotic and psychotropic substances. A prior conviction or acquittal by a forum lacking jurisdiction does not trigger the protection against double jeopardy, as such proceedings are void ab initio.

This view is supported by the authoritative pronouncement of the Hon'ble Supreme Court in *Nasim Amin Butt* (supra) which unequivocally held that prosecution under the Customs Act for narcotic offences is without legal effect and may be lawfully retried under the CNSA.

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Annexures: Judgements referred.