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[LEGALITY OF MILITARY TRIALS OF CIVILIANS]

Saqib Javed

Lecturer, Department of Law, Hazara University Mansehra. sk806288@gmail.com

Misbah Rehman

kmishix225@gmail.com

Kokab Saeed

Assistant Professor, Department of Law, Hazara University Mansehra. kokabsaeed55@gmail.com

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ABSTRACT

The issue concerning the validity of judicial tribunals and their exercise of power over civilians was the request to trial citizens in military courts in 2022. Numerous scholarly articles and court decisions have addressed the subject of civilian trials before military tribunals. Different people have different opinions on whether this unique habit is good or bad. The case has not been resolved definitively by the higher courts. The notion that international treaties have an immediate and tangible impact is one that Pakistan rejects. However, similar to other dualist states, its constitution incorporates several rights granted by such accords. However, the international transnational regimes' interpretations of these rights are quite different from the case law's. Many people still doubt that civilians prosecuted in military tribunals can be considered legitimate under international rights protection institutions. The spread of the modern concept of sustainable justice adds more complexity, since it seems to be at odds with and even contradictory to these governmental policies in Pakistan. In order to investigate the potential for harmonisation, this qualitative research article compares and contrasts conventional constitutional interpretations with disputes in pertinent international agreements. It foretells a future course of suggested alterations by outlining a futuristic suggestion. The legal system has its roots in the colonial era but has been significantly influenced by Islamic law, especially in personal matters like family law, which incorporates Sharia principles. The Constitution lays down a comprehensive legal framework, highlighting the principle of separation of powers between the legislature, executive, and judiciary. This ensures the independence of the judiciary, which is a cornerstone of the legal system in Pakistan.

Keywords: Legality, Military trials, civilians, Military Courts, public high rights

Introduction

The legal system has its roots in the colonial era but has been significantly influenced by Islamic law, especially in personal matters like family law, which incorporates Sharia principles. The Constitution lays down a comprehensive legal framework, highlighting the principle of separation of powers between the legislature, executive, and judiciary. This ensures the independence of the judiciary, which is a cornerstone of the legal system in Pakistan. Pakistan's legal system is organized in a hierarchical fashion, with the Supreme Court at the top and the High Courts in each province at the bottom, followed by district and session courts. In all civil, criminal, and constitutional cases, the Supreme Court of Pakistan is the last court of appeal. When it comes to constitutional interpretation or disagreements between the several bodies of government, it has original jurisdiction. Laws that are in conflict with the Constitution may also be reviewed by the Court. The High Courts, which have both original and appellate jurisdictions in their respective provinces and territories, are situated beneath the Supreme Court (Ahmed, 2010).

In order to protect fundamental rights, the High Courts can also grant writs, such as habeas corpus. At the district level, District Central to the judicial system is the concept of a fair trial and due process of law, which are enshrined in Article 10-A of the Constitution. This article, added by the 18th Amendment (2010), guarantees that any

Journal of Management & Social Science

VOL-2, ISSUE-1, 2025

individual who faces criminal charges or civil disputes shall be entitled to a fair trial. This provision aligns Pakistan's legal framework with international human rights standards, particularly the International Covenant on Civil and Political Rights (ICCPR), which Pakistan ratified in 2010 (Usman, 2023).

However, despite these inherent challenges, civilian courts remain the bedrock of Pakistan's legal system. They are charged with ensuring access to justice, accountability, and equality before the law, which are fundamental to maintaining the rule of law in any democratic society (Iffil, 1997). The right to a fair trial is a constitutional guarantee and a fundamental human right. But the growing trend of military trials of civilians, especially in cases related to terrorism or national security, has raised significant concerns about the constitutional legitimacy of such proceedings. Military courts, often established under temporary constitutional amendments, are criticized for operating with limited transparency, bypassing key procedural safeguards that civilian courts provide, and violating due process norms. These military trials have sparked debates on the erosion of judicial independence, with the military, which is typically outside the civilian judicial framework, exercising powers over the judicial processes in cases that have traditionally fallen under civilian jurisdiction (Hassan, 2023).

The existence of military courts poses a challenge to the authority of civilian courts and threatens to undermine the principles of constitutionalism. Military courts do not offer the same level of public scrutiny, open trials, or appeal rights that civilian courts do. This leads to a situation where the fundamental rights of the accused may not be adequately protected (Popenkov et al., 2021). Furthermore, the military's involvement in civilian justice raises questions about the balance of power between the military and civilian institutions. While some argue that military trials are necessary in certain exceptional circumstances such as combating terrorism or insurgencies critics contend that the widespread use of such courts signals a disturbing trend of militarization within the legal system, which can lead to arbitrary state actions and violations of human rights. During this period, military courts were established to handle issues related to political dissent, subversion, and any actions deemed a threat to the newly consolidated military rule. These military tribunals were used extensively to deal with cases involving opposition leaders and civilian activists who were seen as challenges to the military government.

The objectives of this study to critically analyze the constitutional framework governing military trials of civilians. To evaluate the compatibility of such trials with Pakistan's fundamental rights regime and international human rights obligations. It also includes the to assess relevant judicial pronouncements and their implications for rule of law.

Methodology

Research Design, Secondary Data Sources

The research follows a qualitative approach, focusing on the interpretation and analysis of legal frameworks, court decisions, and policy documents that pertain to the use of military courts in Pakistan. The study aims to identify key constitutional, legal, and human rights concerns associated with military trials, particularly in light of the May 9, 2023 incident. The goal is to gain an in-depth understanding of how military tribunals operate, their impact on civilian justice, and their alignment with international human rights

Journal of Management & Social Science

VOL-2, ISSUE-1, 2025

standards.

Government and Legislative Records

Reports and resolutions passed by the National Assembly and Senate of Pakistan, particularly those related to military courts and the National Action Plan (NAP). Official government statements from the Ministry of Law, Ministry of Defense, and other relevant agencies discussing the justification for military trials and their implementation.

News Articles and Media Coverage

National and international media sources such as Dawn, The Express Tribune, Al Jazeera, and BBC will be used to understand how media covered the events surrounding the May 9, 2023 incident and its aftermath, including government responses, public protests, and the role of military tribunals.

Human Rights Reports

Publications from Human Rights Watch, Amnesty International, and the Human Rights Commission of Pakistan (HRCP) to examine concerns related to due process, fair trial guarantees, and the human rights implications of military trials. Reports from United Nations and other international human rights organizations on Pakistan's compliance with international human rights standards in the context of military trials.

Results and Discussion

Limited Right to Legal Representation

International human rights law guarantees the right to legal counsel for all accused individuals. However, in military trials, access to competent legal representation is often restricted. Lawyers representing the accused may face difficulties in obtaining the necessary clearances to meet their clients or may be excluded from certain parts of the trial. This undermines the right to a fair defense, as the accused are not able to properly present their case or challenge the evidence brought against them. Without a fair opportunity for legal representation, the trial process becomes inherently biased (Ifill, 1997).

Judicial Validation and the Creation of "Legal Exceptionalism" Undermining Civilian Courts

The concept of judicial validation of military trials for civilians in Pakistan, particularly through constitutional amendments or decrees, has contributed significantly to the creation of "legal exceptionalism", which in turn undermines the authority and functioning of civilian courts (von Bogdandy & Venzke, 2012). Legal exceptionalism refers to the creation of a legal framework where certain cases, particularly those involving national security or political unrest, are treated differently from the regular judicial process and fall outside the purview of ordinary legal standards. This concept has deep implications for the rule of law, the independence of the judiciary, and the right to a fair trial. Below are several ways in which judicial validation of military tribunals has led to legal exceptionalism and undermined the credibility of civilian courts:

Erosion of Civilian Judicial Authority

The judicial validation of military trials, particularly by higher courts such as the Supreme Court, creates a dangerous precedent that subverts the authority of civilian courts. In Pakistan, this is particularly evident in cases involving political dissidents or opposition activists, where military courts are increasingly seen as a tool to suppress political opposition. Judicial validation of military tribunals, therefore, strengthens the military's

Journal of Management & Social Science

VOL-2, ISSUE-1, 2025

influence over judicial processes, sidelining civilian courts that are better equipped to ensure due process and human rights protections (Ahmed & Stephan, 2010).

The civilian judiciary becomes marginalized, while military courts operate without the safeguards that characterize civilian trials, such as public hearings, transparency, and access to independent legal representation (Ahmed & Stephan, 2010). The result is a legal system that is prone to abuses of power, arbitrary detention, and unfair convictions, which ultimately weakens societal confidence in the justice system and threatens the integrity of the rule of law (Domingo, 1990).

Pakistan's Compliance with International Law Remains Inconsistent and Insufficient

Pakistan's commitment to upholding international law particularly in the context of military trials of civilians has been a subject of significant concern and criticism. Despite being a signatory to several key international human rights treaties and agreements, including the International Covenant on Civil and Political Rights (ICCPR), Pakistan's compliance with these norms has often been inconsistent and insufficient. This inconsistency not only undermines Pakistan's international reputation but also compromises the fundamental rights of its citizens. Below are several critical areas where Pakistan's adherence to international law has been found wanting:

Use of Military Tribunals for Political Gain

In many instances, Pakistan's political leadership has used military tribunals as a tool to maintain control over political opposition or dissidents. The politicization of the legal system compromises the independence of the judiciary and subverts the pursuit of justice, as civilian cases are redirected to military courts to silence political opposition or punish dissent (Ghori, 2018). By sidestepping civilian courts in favor of military tribunals, the government allows for decisions to be made with little to no legal scrutiny, raising questions about due process and fairness (Katyal & Tribe, 2002).

Legal and Policy Recommendations

To address the challenges posed by military trials of civilians in Pakistan, ensure adherence to international human rights standards, and strengthen the integrity of its judicial system, several legal and policy recommendations can be made. These recommendations aim to protect civilian rights, ensure accountability, and ensure that Pakistan's legal framework complies with international law. Below are the key legal and policy recommendations:

Abolition of Military Tribunals for Civilians

The abolition of military tribunals for civilians is one of the most critical legal reforms needed to ensure justice, accountability, and adherence to international human rights standards in Pakistan. Military trials of civilians undermine fundamental rights, violate due process principles, and contradict the constitutional guarantees of a fair trial. This reform is essential to restore the primacy of civilian courts, uphold judicial independence, and ensure that all individuals, regardless of their political affiliations, are tried according to the principles of justice and human rights (Domingo, 1999).

Constitutional and Legal Justifications for Abolition

The Pakistan Constitution, particularly Article 10-A, guarantees the right to a fair trial and access to due process in civilian courts. Under this provision, civilians should not be tried in military tribunals, as these tribunals do not offer the same procedural safeguards and legal protections as civilian courts (Katyal & Tribe, 2002). Military tribunals are often

Journal of Management & Social Science

VOL-2, ISSUE-1, 2025

characterized by:

Restoration of Judicial Independence

Civilian courts, which are more likely to operate in an environment free from political and military interference, can provide a fairer and more transparent trial process for civilians (Katyal & Tribe, 2002). Legislate that military courts are exclusively responsible for military personnel and offenses related to their military duties. This distinction would preserve the integrity of civilian justice while allowing the military to address its own personnel in a manner that aligns with its operational needs (Usman, 2023). However, its application to civilians especially in cases where civilians are accused of offenses not related to military duty has raised significant concerns regarding due process, fair trial rights, and the potential for political misuse (Von, 2012).

Conclusion

The use of military trials for civilians in Pakistan represents a profound challenge to democratic governance and constitutional supremacy. These trials, often conducted under the guise of addressing national security concerns, have fundamentally eroded the separation of powers and the supremacy of civilian courts. Reinforcing civilian oversight, ensuring the independence of the judiciary, and prioritizing human rights over expediency will allow Pakistan to build a legal system that is capable of addressing national security challenges while also respecting the fundamental freedoms that are guaranteed in its Constitution and international law. The militarization of justice has had profound consequences, not only for the victims of these trials but also for the broader rule of law and constitutional integrity. In this context, judicial independence becomes paramount. Only by ensuring that the legal system is free from political or military interference can Pakistan safeguard its democracy and legal norms.

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Journal of Management & Social Science
VOL-2, ISSUE-1, 2025

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