Military Court Trials of Civilians in Pakistan: Constitutional Rights, International Obligations and Sustainable Justice

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Abstract

The call to try civilians in military courts in 2022 reignited the debate surrounding the legitimacy of quasi-judicial tribunals, and their exercise of jurisdiction over civilians. Regarding trials of civilians in military tribunals, there have been many judgments and academic discourses. There are diverging views either endorsing or condemning this sui generis practice. The higher courts have not decided the matter conclusively. Pakistan does not subscribe to the idea of the direct effect of international treaties. Yet, like any other dualist state, many rights guaranteed in such treaties have been incorporated into its constitution. There is a stark contrast, however, between the case law interpretation of these rights and their international corresponding equivalents in the transnational regimes. The international mechanisms for the protection of rights still pose many questions on the legitimacy of civilians being tried in military courts. More confusion arises with the proliferation of contemporary idea of sustainable justice, which seems divergent and somewhat in contravention of such Pakistani state practices. This qualitative research paper juxtaposes the traditional constitutional interpretations with contestations in relevant international instruments and explores the possibility of harmonization. It lays out a futuristic proposal to predict a direction for proposed future amendments. The same would be done with the increasingly important idea of sustainable justice which directly relates to the United Nations (UN) Sustainable Development Goal (SDG) 16. Moreover, as indispensable themes, the paper explores the following: whether the trial of civilians in military courts is a constitutionally sound practice. Does trying civilians in military courts infringe upon Pakistan’s international obligations? And is the expediency behind these specialized courts still prevalent in the country?

Keywords: Military Courts, Human Rights, Sustainable Justice, Constitution, International Law, SDGs.

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Historical Introduction

Military Courts (MCs) are an integral part of the military structure of a country.¹ The idea that MCs are inherently controversial is a misconception among laymen.² These exist in almost all countries and are considered a part and parcel of the military framework.³ The controversy surrounding these specialized courts, however, exists, in their trial of civilians who are not their primary subject.⁴ This essentially means that their function is to ensure justice within the military and not to proliferate what has been deemed by some as the ‘military’s brand of justice’ to the civilian populace.

The MCs have existed in Pakistan since 1952 under the legal umbrella of the Pakistan Army Act (PAA) 1952.⁵ Yet the trial of civilians in terms of public furor can be traced back to Ayub Khan’s reign (1958-1969) when the Pakistan Army Act was amended allowing it to try civilians.⁶ Yahya Khan during his rule (1969-1971), much like his predecessor, continued to stifle any opposition to his rule through military courts followed by Zulfiqar Ali Bhutto’s reign (1971-1977). Bhutto, though an elected Prime Minister, continued with the same practice. Zia ul Haq in his rule (1978-1988) used these courts by enabling legislative amendments in 1979 to curb political rivalries and silence dissenting voices.⁷ These regimes used military courts as a tool to empower their rule and curb any talk of sedition. That was one of the reasons, a democratic government’s decision to extend military courts in 2014 seemed unusual. This extraordinary development may be justifiable on the following grounds: firstly, because this was not the first instance of democratic governments deliberating the use of MCs;⁸ secondly, this rejuvenation of the military court jurisdiction was inter alia a reaction to two particularly heinous incidents: one, around 150 people including 131 school children were massacred by a terrorist outfit in Peshawar;⁹ and second, a bomb blast at the crowded Wagah border.¹⁰ After these horrifying developments, under the doctrine of exceptionalism,¹¹ a National Action Plan (NAP) was passed in 2014, with a 20-point agenda which included lifting the moratorium on the death penalty as well as a call for special trial courts under the supervision of the army for two years.¹² Interestingly, agenda-point 20 of the act called for ‘revamping and reforming the criminal justice system’. Unfortunately, this part of the agenda has largely been ignored to the detriment of the country’s populace. This plan was put into practice through an independent act called the Protection of Pakistan Act (PPA) 2014,¹³ as well as follow-up amendments to the constitution and the Pakistan Army Act (PAA) 1952.¹⁴ These amendments provided the legal basis for the trial of civilians in military courts.
by effectuating trials of individuals from terrorist outfits that perpetrate religious or sectarian violence. Importantly, the 21st Amendment to the constitution paved the way for the addition of PAA in the Schedule I of the constitution, hence, affording it protection from being struck down even when in contravention of the constitution.

After the first set of amendments i.e. the 21st Amendment to the constitution and Pakistan Army (Amendment) Act 2015 concluded owing to a sunset clause on January 6, 2017, subsequent amendments i.e. the 23rd Amendment to the constitution and Pakistan Army (Amendment) Act 2017 were made to extend their operations in March 2017. In 2019, the government was set to grant another extension which never actualized owing to the shift in the political spectrum of the country. In consequence of the incidents of May 9, 2023, however, the political reaction of the then party—in-power as well as the military suggested that a restoration of the MCs was in the pipeline, a subsequent amendment in the PAA substantiated this.

As of now, Pakistan’s former Premier Imran Khan along with many others challenged the recently promulgated Official Secrets (Amendment) Act, 2023 and Pakistan Army (Amendment) Act, 2023. In the proceedings that followed, the Supreme Court of Pakistan (SCP) annulled any proceedings involving the trial of civilians under these Acts. The decision of the five-member bench of the apex court was challenged and overturned by a six-member bench on December 13, 2023. A potentially historical decision is still awaited though.

It is pertinent to mention here that no new courts have been established thus far. Instead, the existing military courts were given an extended jurisdiction to try civilians for offences of a specified nature and for specific period. Moreover, these courts were deemed extraordinary, expedient and sui generis to deal with an unprecedented situation.

Importantly, setting up of these alternative bodies was an implicit admission of the lacunae in the general court system and a tacit recognition of the unsustainable nature of this arrangement. The sunset clause, in particular, substantiates this opinion.

According to Inter-Services Public Relations (ISPR), until 2019, 656 out of 717 cases were concluded, resulting in 345 sentences of capital punishment, 296 sentences of imprisonment and only five acquittals. This
means a conviction rate of 99.22 percent. Additionally, 25 more individuals were tried by military courts between 2018 and 2022.

This introductory historical discussion is followed by discussions which seek to explore whether there exists a constitutional legal basis for these military courts. Secondly, what is the impact of these specialized courts on Pakistan’s compliance with its international obligations? The subsequent discussion surrounds the developing perspectives of sustainable justice and answers the question of whether these courts offer a sustainable model commensurate with the UN Sustainable Development Goals (SDGs). This article uses the qualitative research method employing historical, doctrinal and analytical approaches to reach its conclusions.

A few caveats: this paper deliberately does not discuss the landmine that is the death penalty as it is a debate as well as a controversy separate in itself. Secondly, the paper alludes to only the most relevant and recent developments for the sake of brevity. Finally, this is neither an insight into the workings of MCs, nor is it a detailed discourse on the infringement of rights brought about by these anomalies in the country’s legal order. What this paper seeks to do is paint a holistic picture portraying the anomalous nature of these courts and depict the future in terms of their sustainability.

Trials of Civilians in Military Courts, the Constitution and the Superior Judiciary

States with a new democratic setup also referred to as democracies-in-transition tend to have a weak record when it comes to honoring fair trial and due process guarantees. This problem increases in the case of military courts – especially when they are expected to uphold these higher values. These higher values tend to prolong trials to afford the accused more time for producing rebutting evidence. This creates friction between them and the very purpose of MCs, as they exist to accelerate court processes and secure rapid convictions. As the saying goes, ‘Justice delayed is justice denied, and justice hurried is justice buried’. Advocates of civil supremacy argue that speedy trials should only be allowed when due process of the law is prevalent over speedy justice mechanisms.

Article 175 of the Constitution of Pakistan provides for the criteria for the formation of any court. Most importantly Article 175 (3) calls for separation of the judicial and executive branches of the state, hence, calling for a separation of powers. The idea of military-administered justice, however,
contravenes this constitutional trichotomy of powers, which is considered a hallmark of democracy in the civilized world.  

Moreover, the constitutional and PAA amendments discussed above vested MCs with jurisdiction over ‘people who claim to, or are known to belong to any terrorist group or organization misusing the name of religion or a sect and are accused of carrying out acts of violence and terrorism’. Meaning, this jurisdiction might not extend to people who do not purport to misuse the name of religion. Baloch separatists, or political activists, for instance, would not fall under this category if the literal interpretation of these amendments is accepted. Therefore, there was a huge cause for concern, when the government called for demonstrators from a political party to be tried in the MCs.

Furthermore, there is a visible contradiction between the constitutional rights and the MCs. This contradiction was admitted by the legislator when in the 2017 amendment, a clause to exclude the jurisdiction of Article 8 of the constitution was inserted, resultantly PAA, Official Secrets Act 1923, together with the PAA 2014 was added to the first schedule of the constitution. This means, that these laws were to be applied exclusive of Article 8 of the constitution which provides that any ‘laws inconsistent with or in derogation of fundamental rights (are) to be (considered) void.’

Some other legal issues that will be alluded to in the following discussions are enumerated below:

a) A bar to appeals has been put by the Section 133 of the PAA, meaning that the decisions of military courts cannot be challenged in the superior courts. And if any such court wants to take cognizance of a case under a constitutional petition, it would need to first circumvent that bar.

b) Section 93 of the PAA states that the trial and subsequent punishment can take place ‘in any place whatsoever’. This alludes to the assertion that court proceedings held in an underground bunker are essentially the same as the ones held in open court. Moreover, the charges of the accused are also kept a secret.

c) Article 10-A of Pakistan’s constitution guarantees a fair trial, it states that ‘(f)or the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and
due process.’ There seems to be a consensus among scholars that military court proceedings under PAA contravene this Article.\(^{32}\)

d) Amendment to Article 175 which facilitated the trial of civilians by the military executive as discussed above.

e) Article 245 provides that the military may ‘act in aid of civil power when called upon to do so’. The creation of military courts is not ‘aiding’ but displacing the current judicial system, or creating a parallel system that contravenes the constitution, this was the opinion of the court in *Sheikh Liaquat Hussain v. Federation*.\(^{33}\) For many, this is the operative law right now.\(^{34}\)

f) The federal government can send any case to the military courts, in case the trial had already been commenced no new appreciation of evidence would be required.\(^{35}\)

g) The decision-makers in MCs are military officers. They are dependent, on the executive, from appointment to retirement. This coupled with the fact that their training is in no way near those of tenured judges compromises their independence. Moreover, International principles on the independence and accountability of judges, lawyers and prosecutors, and UN’s Basic Principles on the Independence of the Judiciary do not apply to them.\(^{36}\)

h) The right to choose and appoint a civilian counsel has been known to be ignored by the MCs,\(^{37}\) for instance, in the Peshawar High Court (PHC) petitions, the court noted that the same counsel with only six years of experience had represented all the accused in all the cases.\(^{38}\)

i) There is a problem of confessions taken under dubious circumstances, the PHC noted this in its previously-mentioned judgment that the confessional statement signed by all the individuals was the same.

j) Aside from not meeting international fair trial and due process standards: proceedings in an MC do not guarantee a right to a public hearing, nor a right to a reasoned judgment, and the place of trial is also kept a secret.\(^{39}\)
The Superior Judiciary’s Role in Recent Years

It has been observed that with every new amendment to the PAA, the powers of the MCs are exponentially increased while the already-compromised constitutional rights and guarantees continue to depreciate.\(^\text{40}\) Whenever such situations arise, however, the people look at the judicature to step in and afford protection for their constitutional rights. Following paras discuss some of the recent discussions held in the superior courts in recent years.

Supreme Court Judgment of 2016

In *Said Zaman Khan v. Federation of Pakistan and others*,\(^\text{41}\) the validity of the 21st Amendment and by extension that of MCs was called into question. The apex court, in its final judgment, upheld MCs and decided that the provisions of the impugned acts could not be questioned even when they contravene fundamental and constitutional rights. Moreover, it conceded that superior courts lack appellate jurisdiction in these cases.

Contrarily, the apex court held that a superior court’s writ jurisdiction can be invoked, though not in the *Said Zaman Case*, against the decision of a military court on grounds of (a) coram non-judice, (b) mala fide prosecution, (c) insufficiency or a complete dearth of evidence and for want of jurisdiction. These grounds were limited and subject to restrictive interpretation. Despite these constraints, this turned out to be a positive development, as shown in the following PHC judgments.

Peshawar High Court Judgments of 2018,\(^\text{42}\) and 2020

In *Abdul Rashid v. The Federation of Pakistan*, the Peshawar High Court (PHC) provided relief to 74 internees and set aside the impugned judgment of a military court on the grounds of Fundamental Rights. The court assumed jurisdiction relying on *Said Zaman Khan v. Federation of Pakistan* and then set aside the MC’s decisions on the grounds of dearth of evidence, and malice of fact and law. The court highlighted that due process was not followed in MCs and scrapped the confessions as these were not up to the standards. This 2018 judgment was replicated in 2020 when the court was petitioned in cases involving near-identical facts.
Supreme Court 2023

Appeals against the PHC's decision as well as against similar decisions made their way to the apex court. The SC took this as an opportunity to assert its constitutional supremacy, restrict the military courts' jurisdiction and make a stand for the criminal justice system reform. The court denounced ‘the militarization of the judiciary’ and in its verdict on October 23, 2023, it declared such trials as unconstitutional.

This judgment was followed by multiple intra-court appeals which ultimately resulted in an interlocutory order of its suspension. A final decision, however, is still awaited. In recent developments, the proceedings seem to be bogged down in procedural matters with no conclusion in sight.

Concluding the above discussion, it can be said that the higher courts have shown an ambivalent approach towards civilian trials in military courts. The 2016 judgment of the apex courts evidently denied relief, but provided a criteria that led to the two PHC judgments. In the 2023 judgment, the civil society hailed the impugned order of October 23, as a landmark development. Its importance might have been overstated though, as in its detailed judgment, the court held that this judgment only had prospective application and those who stood convicted before its passing shall not be affected. Whether the judgment would survive the intra-court appeals and would be extended to apply to more diverse cases remains to be seen.

Military Courts and Compliance to International Law

The Army Act has been influenced by developments alien to Pakistan’s domestic legal system, sometimes due to historical affiliations, and at other times due to international obligations. An example of the former is the influence of the Army Act of the United Kingdom (UK) so much so that certain amendments were made in Pakistan only after similar alterations in the UK. An example is the protection against double punishment afforded to the defendants, this was only incorporated in the 1966 Amendment Act once a similar amendment transpired in the UK. This does not, however, create an obligation on Pakistan to amend its law. Similarly, instruments of soft law such as resolutions, human rights conventions from other regions and foreign case laws do not create an obligation. Binding obligations are only created through international customs and treaties or conventions that Pakistan is a signatory of.
Another caveat is that Pakistan is a dualist state which means that any international treaties or conventions that Pakistan signs and then ratifies do not automatically become binding but need to be transposed into its domestic legislation.\textsuperscript{50} According to the Ministry of Human Rights, ‘the constitution contains 25 rights in all of which 15 relate to civil and political rights whereas the rest of the 10 are social and economic rights.’ These rights echo their counterparts contained in the International Bill of Rights (IBHR) i.e. the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR) and its two Optional Protocols, and are an example of transposition.\textsuperscript{51}

In 2019, when the MCs were going to be extinguished owing to the aforementioned sunset clause, the then government tabled a bill to extend the same. The International Commission of Jurists (ICJ) commented in their protest press release on the matter ‘The trial of civilians by military courts is a glaring surrender of human rights and fundamental freedoms’.\textsuperscript{52} This statement was followed by a detailed briefing paper, which highlighted the set standards the military courts had failed to observe in their proceedings.\textsuperscript{53}

Decaux has pointed out the general principle in the international law that military courts should be separate from the civil judiciary.\textsuperscript{54} These general principles are enunciated in international instruments many of which Pakistan has ratified. The UDHR in its Articles 6-10 talks about the equality of persons before the law. Article 10, in particular, guarantees a fair and public hearing.\textsuperscript{55} The problem with UDHR is in its non-binding nature yet the moral principles emanating from it are incorporated in other documents which possess a binding character.\textsuperscript{56}

For instance, Article 14 of the ICCPR provides that ‘everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.’ The military courts with military-commissioned officers as judges, being part of the executive, do not fulfil the criteria of competence, independence or impartiality.\textsuperscript{57}

The UN Human Rights Committee (HRC) has made it clear that the right to a fair trial before an independent and impartial court under Article 14 of the ICCPR applies to all courts, whether ordinary or specialized, civilian or military. Pakistan ratified ICCPR on June 23, 2010 and is now under the purview of the treaty compliance watchdog HRC.\textsuperscript{58} Moreover, the HRC in its “General Comment 32” clarifies that a judicial body under Article 14 should
operate independent of the executive and legislature. It also iterates that any general reservations made to Article 14 are void.\textsuperscript{59} The HRC held further that ‘as certain elements of the right to a fair trial are explicitly guaranteed under international humanitarian law during armed conflict, the committee finds no justification for derogation from these guarantees during other emergency situations.’\textsuperscript{60}

There have been concerns that some of the people Pakistani military courts tried, had not attained the age of majority and were, therefore, children.\textsuperscript{61} This would mean that the special international instruments for the protection of children have been violated. Pakistan is a party to the UN Convention on the Rights of the Child (CRC) and ratified it in 1990.\textsuperscript{62} The UN Committee on the Rights of the Child charged with monitoring compliance of CRC has held that the appalling practice of prosecuting children in military courts breaches not just CRC but also Principle No. 19 of the “Decaux Principles” as well as Article 77 of the First Protocol Additional to the Geneva Conventions which specifies that special care should be afforded to matters concerning children because of their tender age.\textsuperscript{63}

The rules of international humanitarian law (IHL) under Common Article 3 to the Geneva Conventions of 1949 (GCs), governing the legality of military tribunals and establishments highlight the significance of these key fair trial principles so much so that IHL does not allow derogation from these principles even in cases of emergency. Contrarily, it has been suggested that MCs generally do not violate IHL,\textsuperscript{64} but this is just one point of view.

Aside from these binding treaties and compulsory obligations, there are instruments articulating principles that are not considered binding and are widely regarded as soft law. One such set is the basic principles on the independence of the judiciary, Principle 5 of these principles states that:

\textit{Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.}\textsuperscript{65}

The Paris Standards Article 16 provides that jurisdiction over civilian offenders will rest with civilian courts, even in emergencies.\textsuperscript{66} Draft Principles Governing the Administration of Justice through Military Tribunals,\textsuperscript{67} adopted by UN Sub-Commission on the Promotion and Protection of Human Rights aim to restrict the jurisdiction of military courts to military personnel
and stress that civilians should be tried by civilian courts only. Similarly, Principle 29 of the UN Updated Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity states that: ‘The jurisdiction of military tribunals must be restricted solely to specifically military offences committed by military personnel’.

In addition, Draft Principles on Military Justice adopted by the UN Commission on Human Rights (former) in 2006, Principle No. 9 states that: ‘in all circumstances, the jurisdiction of military courts should be set aside in favor of the jurisdiction of the ordinary courts to conduct inquiries into serious human rights violations such as extrajudicial executions, enforced disappearances and torture, and to prosecute and try persons accused of such crimes.’

Furthermore, the regional courts and treaty bodies agree that military courts do not possess the authority to try civilians, these include the European Court of Human Rights (ECtHR), the Inter-American Court of, and Commission, on Human Rights, as well as the African Commission on Human and Peoples’ Rights (ACHPR).

All of these binding and non-binding documents suggest a global denunciation of the idea of trying civilians in a military court. As a signatory to these documents or falling under their umbrella due to their universal nature, Pakistan is not unaffected by this trend. The trend seeks to corrode such practices and pave the way for human rights supremacy and criminal justice reform. Therefore, a sustainable solution to this problem is not just a compliance issue for Pakistan but also raises concerns over the protection of constitutional rights for its citizens.

**Are Military Courts a Sustainable Model?**

Sustainability has become a buzzword these days. The words sustainable development in particular have transpired not only a lot of research but have been a force for global change. Legally, sustainable development, as a principle of integration, is not a recognized principle of international law, currently. Another similar term, sustainable justice has also been talked about lately, especially in the environmental context. This has led to an exclusive interpretation of the term in the context of the environment. That is essentially mixing environmental justice with sustainable justice. Most importantly, one needs to remember that justice in sustainability is different from sustainable justice.
Hickman defines ‘sustainable justice’ as criminal laws and criminal justice institutions, policies, and practices that achieve justice in the present without compromising the ability of future generations to have the benefits of a just society.\textsuperscript{71}

Pakistan’s commitment to SDGs obligates it to ensure sustainable justice for its populace.\textsuperscript{72} The SDG 16 regarding peace, justice and strong institutions directly relates to discussion here. The goal demands a commitment to ‘promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.’\textsuperscript{73} Additionally, the Sustainable Justice Charter,\textsuperscript{74} a persuasive document which draws its legitimacy from leading scientific experts instead of politicians,\textsuperscript{75} defines sustainable justice as the brand of justice which provides:

- actual resolution of problems and conflicts in the short and long term
- more workable and satisfying relationships, and to
- the general well-being in society.\textsuperscript{76}

Military courts, however, do not seem to offer a sustainable model. Firstly, the international courts and tribunals are silent on whether MCs can administer sustainable justice.\textsuperscript{77} Secondly, as they not only provide a temporary solution but undermine the building and institutionalization of a more sustainable solution in the form of effective and functional criminal courts, this is substantiated by what Pakistan has experienced since the first creation of the MCs. Moreover, as discussed above, even when these courts seemingly resolve the problems of security, peace and abrupt administration of justice, they cause arguably worse problems of injustice, inequality and create obstacles in the way of due process and rule of law. Furthermore, the MCs’ existence as an extraordinary measure\textsuperscript{78} to deal with an unprecedented situation makes them inherently unsustainable and extending them after such an emergency is over seems ill-advised, as their raison d’être ceases to be. To conclude, it can be safely said that the MCs are not advancing the cause of sustainable justice, instead they risk undoing whatever has been done for its proliferation. True sustainability can only be achieved when democratic values of due process, and equality are observed.

Analysis and the Way Forward

Although military courts have had their jurisdictions adjusted to try civilians in many parts of the world,\textsuperscript{79} it remains an unsustainable practice that can no longer continue in many countries—nothing of the kind can persist in the UK,
for example. In the US, the law used to be complicated but the courts have come about to promote the idea of the supremacy of civil authority over the military. The US has come a long way and now even the congressional powers under Article I, Section 8, Clause 14 of the US constitution have been restrictively interpreted to protect the sanctity of the civilian courts. Pakistan, however, cannot be compared to either of the two countries due to its history of martial law administration.

Trial of civilians in MCs is a sui generis practice in nature and it can be said with reasonable certainty that the extraordinary circumstances justifying this exceptionalism have dissipated. This should be the conclusion of this practice. Additionally, all the relevant laws should be amended to make the constitution’s supremacy infallible.

Moreover, special courts or tribunals are important, but their purpose is to supersede law in certain specialized areas and facilitate the administration of justice more efficiently. Military courts, however, do not serve this purpose, instead, they are said to create a parallel system that is considered devoid of higher principles of equity, justice and good conscience. In the words of Wolf, ‘(T)he new legal framework (on MCs) will lead to a further destabilization of the country’s political institutions.’ Looking at the country’s current political quagmire one can say that Wolf’s prediction of 2015 has materialized.

The military’s role under Article 245 of the constitution also needs to be revisited. The article allows civilian authorities to call on the military for assistance in any matter they deem fit. Excessive dependence on the military under this article, especially in matters that are under the purview of civilian bodies should be curtailed as it undermines sustainable civil institution building. This also contributes to the erosion of the military’s positive image, which ultimately lowers nation’s morale.

The resources that are going into the MCs should be put into the much-awaited criminal justice system. Pakistan already has Anti-Terrorism Courts (ATCs), and though these themselves are the lesser of the two evils their civil nature makes them a stronger candidate that can be revamped to create an effective court structure dealing with terror cases based on constitutional and normative values. Empowering ATCs would not only resolve their jurisdictional conflict with the military courts but also be an inadvertent extension of the SC’s decision in *Sheikh Liaqat Hussain and others v. Federation of Pakistan*. There might be little merit in setting up an entirely new
set of courts even though Section 8 of the PPA 2014 provides the legal basis for it, as this would lead to even more jurisdictional and procedural problems.

This reformation needs to be a combined effort, the civilian as well as military leadership needs to be on the same page to make any material gains. This may seem a bit unlikely due to the current power distribution, yet any unilateral efforts to reform would largely be unsuccessful. Especially, in a country where there is a history of direct military rule as well as where the fine line between separation of powers is not determined accurately. Ample case studies have shown that sustainable reforms require cooperation between all parties involved. A bargaining exercise has potential, as the military might settle for reducing influence in some areas while gaining in others. Reforms in the judicial system are the key to deal with any predicaments arising out of disturbances in society.

Notes

4 See more, Robinson O. Everett, “Persons Who Can be Tried by Court-Martial,” *Journal of Public Law* 5 (1956): 148-173, https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1309&context=faculty_scholarship. In certain cases, civilians maybe ordinarily tried in military courts e.g. when they are family members of military personnel stationed abroad.
5 For more, See Zaheer Hasan, *The Times and Trial of the Rawalpindi Conspiracy 1951: The First Coup Attempt in Pakistan* (Karachi: Oxford University Press, 1998). Whilst some scholars believe that the Special Tribunal formed under the Rawalpindi Conspiracy (Special Tribunal) Act was the first Military Tribunal.
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12 National Counter Terrorism Authority, GoP, “National Action Plan” (Governement of Pakistan, 2014), https://nacta.gov.pk/nap-2014/. Probably the word ‘military courts' was not used due to the stigma attached with the term.

13 Protection of Pakistan Act, 2014 provides legal basis for creation of special courts to deal with cases. The Act is silent about the nature of such courts.

14 Constitution (Twenty-First Amendment) Act of 2015; and Pakistan Army (Amendment) Act of 2015.


16 Ironically, it was the government of the Pakistan Tehreek e Insaf (PTI), which is now facing a multitude of cases under MC laws, which decided to extend the duration of the same MCs in 2019, whilst the opposition at that time vociferously opposed such action.


22 Black’s Law Dictionary s.v. “sui generis,” accessed November 11, 2023, https://thelawdictionary.org/sui-generis/#:~:text=SUI%20GENERIS%20Definition%20%26%20Legal%20Meaning&text=Lat.,ot%20its%20own%20kind%20peculiar. It is defined as ‘of its own kind or class; unique or peculiar’.


26 A court should be legally established and conferred a jurisdiction through law and constitution.


30 Pakistan Army Act of 1952, Sec. 133, Act No. XXXIX (1952).

31 Pakistan Army Act of 1952, Sec. 93, Act No. XXXIX (1952).


33 Sheikh Liaquat Hussain v. Federation, [1999] PLD SC 504 (Pak.).
36 Shah, “The Right to a Fair Trial and the Military Justice System in Pakistan.”
38 Writ Petition 536-P of 2018 PHC.
41 Said Zaman Khan v. Federation of Pakistan and others, [2017] SCMR 1249 (Pak.).
42 Writ Petition 536-P of 2018 in the PHC.
44 2023 SCMR 1732.
45 The unreported order is available on the SC website under SC reference 2023 SCP 392.
47 2023 SCMR 1732.
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63 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977.
69 Economic and Social Council, United Nations, “Draft Principles Governing the Administration of Justice Through Military Tribunals.”
74 The charter formulates universal core principles of Sustainable Development for the judiciary. These principles have been derived from various Declarations and Development Goals by the United Nations, the Earth Charter, the Organisation for Economic Co-operation and Development (OECD) Guidelines, the International Cricket Council (ICC) Business Charter,
and the International Organization for Standardization (ISO) 26000 Guidance on Social Responsibility.


76 For details, see the website of Center for Sustainable Justice, https://www.sustainablejustice.org/index.php?id=welkom&taal=eng.


78 It has been mentioned in the 21st, 23rd constitutional amendments as well as Protection of Pakistan Act 2014.


85 See more at Reena Omar, “Temporary Law mustn’t Become Permanent, Statesman, January 10, 2019, https://www.thestatesman.com/supplements/law/temporary-law-mustnt-become-permanent-1502723482.html. ‘The ATA, which promised “speedy justice” at the cost of some basic fair trial rights, progressively displaced the regular criminal justice system, with cases of ordinary murder, robbery, kidnapping and sexual violence regularly being tried by special anti-terrorism courts constituted under the act. Slowly, the “exception” became the norm, and the weaknesses in the operation of the regular criminal justice system remained unresolved.’
