Detained army officers cannot be put in a legal vacuum

APPEARING BEFORE A DIVISION BENCH OF THE LAHORE HIGH Court in a case involving the detention of six army officers, the Pakistan Army's Judge Advocate General (JAG) has said that he cannot present the reasons of detention in a written form because of the sensitive nature of the case. The detained officers, picked up at various times, have been in custody for nearly 18 months. All of them, according to JAG, have been taken into custody under the Army Act of 1952. The LHC bench is hearing six different habeas corpus petitions challenging their continued detention and the fact that none has been allowed to meet his family so far. Interestingly, after the officers went missing, the Inter-Services Intelligence denied they had been detained. However, later, the army authorities acknowledged that the officers were in the army custody.

The question, regardless of the guilt or otherwise of the detained officers, is this: Can they be detained for nearly one-and-half years without *due process of law* and without allowing them to meet their families and having denied them their fundamental rights? The answer is in the negative. And this applies as much to someone detained under the Army Act as under another law in the country.

Article 10 of the Constitution of Pakistan is very clear in this regard. Even in cases of preventive detention, the State cannot keep anyone detained for more than a period of three months at the expiry of which an appropriate Review Board, constituted either by the Chief Justice of Pakistan, or if the person is detained under a provincial law, by the Chief Justice of the concerned High Court, will determine whether there are sufficient grounds for the continued detention of the person. Indeed, this is exactly what the State is doing in regard to the detained employees of the Kahuta Research Laboratories.

The issue is simple. The High Courts and the Supreme Court have constitutional supervisory jurisdiction under articles 199 and 184/187, respectively. The courts can, on a suitable petition made to them — and in some cases *suo motu* — call for the record and the workings of any department, civil or military, to see whether the action being impugned is in accordance with the law and the constitution. This jurisdiction has been derived through the operation and evolution of law over the past five or six centuries and is codified in article 199 of the Constitution of Pakistan.

If someone is detained under the Army Act, then too before the court can determine its jurisdiction, it has the judicial power to determine the jurisdiction. That power can only be exercised after the detaining authority has produced before it the grounds under which a person has been detained and the material showing that those grounds are sufficient for such detention. In other words, judicial oversight and fundamental rights will always be available to a detained person regardless of the operation of any law under which he might have been detained.

The army cannot deny the detained officers either judicial oversight or the operation of fundamental rights. But while this is the legal angle, there is also the humanitarian dimension of this episode. Take, for example, the detainees at the notorious Guantanamo Bay detention facility. The entire civilised world is bitterly critical of the legal black-hole into which the US authorities have put people detained in that facility. This criticism is justified. No one can detain anyone indefinitely without trying him. Neither can any detainee be denied due process of law. Both these basic requirements are not being met in the case of the Guantanamo Bay prisoners. Neither are they being met, we are afraid, in the case of the detained army officers in our own country. Whether they are guilty is for the law to decide. But they must be given access to all that the law allows them to have. They cannot be thrown into a legal vacuum. ■