**Super Over**

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The swords have been drawn and the scabbards thrown away. On Monday, a five-member bench of the Supreme Court wrapped up a much-talked-about case pertaining to the military trial of 102 civilians arrested in the wake of protests orchestrated on May 9. The gavel fell in a historic direction as a 4-1 majority ruling was announced in mere hours after the verdict had been reserved. Although a detailed court order is yet to be analysed for a series of exceptions struck down by the honourable bench in its unequivocal opposition to section 2 (1) (d) of the Army Act, the short order is being celebrated for upholding the principle of judicial supremacy. That civilians cannot be tried by military tribunals as long as civilian structures are present and operational continues to echo across the spectrum. But stop. Think again. What does the order really say? Considering how today’s verdict can still be appealed before a full court, the ball would ultimately meander its way through to knock on the doorstep of Chief Justice Faez Isa Qazi. While the maverick has already gained a reputation for toeing an unusual line, a long list of precedents left by his brother judges have done nothing substantial to clear the air. Despite his astounding reputation, former Chief Justice Atta Bandial preferred to stand with one foot on two boats. At least 20 civilians were tried by the military courts between 2018 and 2022. And while it may suit the affected party to deplore how fundamental human rights are to be trampled if the constitutionally mandated rights are undermined in proceedings notorious for their lack of transparency and due respect for a proper legal process, it would be tremendously hard to make light of their own share of the pie. Back then, these proceedings were defended as the best use of resources. Considering how it takes a military court to wrap up a case the same time in which a civilian court blows dust off its quill and sends out a summons, the former would appear an enticing option to anyone. Why is that Mr Khan, a petitioner challenging the federal government’s decision to hold the trial of the May 9 rioter in military courts, also found it befitting to land as a co-accused in a similar constitutional petition for “exceed(ing) their power and illegally abduct(ing), detain(ing) and sentenc(ing) without due process of law, the civilians and in violation of their fundamental rights and constitutional guarantees given for every citizen under the constitution of Islamic Republic of Pakistan?” Questions over his ability to bat, bowl, run around the pitch and raise the menacing umpire-y finger would continue to haunt him for years to come.

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Personalities aside, there’s no denying the looming shadow of militarisation whenever any such exercise is brought to the open. The likes of Raza Rabbani had called it a “last breath taken by Parliament” back in 2015 even when the country was battling the fury of indiscriminate war criminals. From Amnesty International to Human Rights Watch, there appears no shortage of those derailing this bad precedent where the state can enjoy authority over the provision of basic human rights. However, one cannot bury their head in the sand and pretend nothing out-of-the-ordinary happened on May 9. The onslaught of vicious, coordinated mobs on installations all around the country in a desperate attempt to sprinkle kerosene on the battle lines would have to be accepted. The new reality would have to be considered. Caustic verdicts by Lahore and Peshawar High Courts, overturned convictions and scathing notes of dissent from around the globe do manage to raise various loopholes, most glaring of which are judicial submissiveness, opaque trials, little to no right or breathing space to fight back and an overall frightening aura that clouds the proceedings. On the other hand, the proponents of a free, effective judiciary are yet to put forward an outlier in a decades-old saga of neglect with which access to justice has been handled by successive governments. Are we to assume that rivers of milk and honey would begin to flow the minute sun sets on military courts? What about the failure of our criminal justice system in enabling tens of thousands, if not millions, of accused to leave through the cracks? Under-the-table dealings and reprehensive wheelings continue to taint its performance as dismally upholding the rule of law. Some sort of breakthrough would have to be worked upon. An in-between. A middle path. It has always been the lack of justice system reforms that allow those in power to go for the ad-hoc route. Either fill the vacuum with a robust, transparent system that wins the confidence of all institutions of state or stop humming feel-good tunes.

*The writer is Oped Editor (Daily Times) and can be reached at durenayab786@gmail.co. She tweets @dureakram*