**Trial of Civilians in Military Courts**

[Mehr Ispahani](https://dailytimes.com.pk/writer/mehr-ispahani/" \o "More Articles by Mehr Ispahani)

October 31, 2023

Military Courts are functioning under Pakistan Army Act, 1952 and are an intrinsic part of the Judicial System of Pakistan. Military Courts are convened as and when required by Commanding Officers at various echelons of the Military. Military Courts follow a legal procedure scheme which safeguards rights of accused in accordance with the Constitution of Pakistan and ensure fairness during all stages of trial. These include provision of grounds of arrest, counsel access, protection against double jeopardy, provision of charge sheet, provision of statement of evidence, right of hearing, Recording of Evidence, Right to appeal, Judicial Review and Right to file Mercy Petition. Moreover, International Court of Justice (ICJ) judgment dated 17 July 2019 in Kulbhushan Jadhav Case, wherein, no objection has been raised by the ICJ regarding any violation of natural principles of justice during the trial by FGCM. ICJ did not object the jurisdiction of FGCM but only showed concerns over procedural anomalies. The rationale behind the establishment of Military Courts rests on the expedient/ fair process inherent to the Military Courts.

Special Military Courts are not an integral part of the routine functioning of the Military and were established as a response to dealing with situations, which warranted an immediate re-enforcement of the existing legal framework through the ‘Doctrine of Necessity’. These were made part of and continued to function within the National Legal System after enacting certain amendments in the Constitution of Islamic Republic of Pakistan, 1973. It is pertinent to understand that 21st and 23rd constitutional amendments were made for the trials of civilians involved in terrorist activities in order to augment the existing Anti-Terrorism Courts (ATC) as the anti-terrorism offences were not triable under the PAA, 1952, prior to the said constitutional amendments. In contrast, the offences under Official Secrets Act, 1923 (OSA) as already mentioned fall within the ambit of the PAA, 1952 for the trial of civilian offenders under section 2(1)(d)(ii). Thus there is no requirement of constitutional amendment for establishing Special military courts for trials of the civilians involved in 9 May 2023 incident.

Special Military Courts are not an integral part of the routine functioning of the Military and were established as a response to dealing with situations, which warranted an immediate re-enforcement of the existing legal framework through the ‘Doctrine of Necessity’.

The rationale behind the establishment of Military Courts rests on the expedient/ fair process inherent to it. Moreover, certain offences covered under the Official Secrets Act, 1923 are triable by Military Courts, therefore, the Military Courts are only exercising their jurisdiction as vested by the Law. Legal and procedural matrix of Military Courts and Sessions Courts reveal that both the said Courts are not ‘at odds’, in fact, civilians who are tried under the Army Act, 1952 by the Military Courts, undergo a largely similar process in terms of law and procedure. Procedure followed by the Military Courts for framing of charge is parallel to the procedure provided in CrPC, 1898. Thus, both Military Courts and Sessions Court follow the same procedure for framing of charge.

Trials by the Military Courts, under the Army Act, are conducted in accordance with our jurisprudential history, recorded through judgments rendered by Superior Courts of Pakistan. To this end, such judgments, alongwith the principles of law contained therein, form the corpus of principles applied by members of the Military Courts during a trial. Furthermore, any party who feels aggrieved with decision of Military Courts, may prefer an appeal before the Army Court of Appeals. It may further impugn the order of Army Court of Appeals through judicial review before the concerned High Court, as well as, an appeal before the Supreme Court of Pakistan, thereby reverting back to the ordinary judicial structure.

The question of subjection of civilians under the Army Act, assumes great importance and at first glance can seem to exist at odds with the fundamental Rights safeguards entrenched in our Constitution. However, a deeper understanding soon reveals that the Army Act in General and the Military Courts in particular are designed around the concept of safeguarding the Fundamental Rights in line with any other Court of Law. Moreover, it needs to be clarified that only certain categories of civilians can be tried under the Army Act. This process is based on legal provisions as elaborated in the Army Act, and have been frequently specified through Military Courts since creation of Pakistan. In a case titled as District Bar Association, Rawalpindi & others Vs FoP & others (PLD 2015 SC 401) SCP upheld the jurisdiction of Military Courts to try and sentence the convicts of offences which are subject to Army Act as well as the FGCMs constituted under Army Act.

“……that the convicts in view of the offences for which they were accused, were subject to the Pakistan Army Act and the FGCMs constituted under the Act were vested with the jurisdiction to try convicts and sentence them, hence, the convictions and sentences awarded are not without jurisdiction……”

Certain categories of civilians can be tried by the military courts convened under the provisions of Pakistan Army Act, 1952. On 9 May 2023 a highly condemnable, pre-planned sabotage activity was carried out across the country by certain civilians to destroy military/ civil installations vital to the security and interests of the State. Only those civilians, who were actively involved in the attacks/ sabotage activities against the Military establishments, or otherwise in relation to the affairs of Armed Forces, the offences fall under Official Secret Act, become subject to the Pakistan Army Act by virtue of Section 2 (1)(d).

*The writer is freelance columnist from Peshawar*