**Can a Civilian be Tried under the Army Act?**

[Asif Mahmood](https://dailytimes.com.pk/writer/asif-mahmood/)

June 23, 2023

As the paranoid political-legal climate grows febrile, a crunch question to the fore: can a civilian be tried under the Army Act or there is an absolute prohibition for such a trial under the Constitution?

To get a correct answer to this question we have to look at the matter from the following angles;

What does the Army Act say?

Is it ultra-virus to the Constitution?

What does the precedent law say?

What have been the legislative tradition, practices, and policies?

Section 2 of the Army Act has spelt out who can be tried under the Army Act. Subclause (d) allows civilians to be tried if they are accused of seducing or attempting to seduce any person subject to this Act from his duty or allegiance to the government or having committed any offence concerning the naval, military, or air force affairs of Pakistan under the Official Secrets Act.

The heart-rendering May 9 episode was not a political protest that turned violent. It is believed to be a mutiny aimed to eviscerate the state institution from within. Taking away the files from the Core Commander’s house, destroying and attacking the military installations, and belonging to Armed forces fall under the purview of the Army Act and the Official Secret Act and can be tried by the military courts as per section 2 of the Army Act.

Is it impermissible under the Constitution? Should it be and can it be are abutting here but the fact is not denying that there is no prohibition in the Constitution. Article 10 A of the Constitution only talks about a fair trial. Whether or not a trial is fair depends upon the facts of every trial. There is no hard and fast rule that every trial in an ordinary court shall be declared a fair trial and a trial in a military Court is destined to be an unfair trial. A trial may be fair in any court of law and it may accomplice the opposite in any court depending upon the facts and details of every case separately.

May 9 episode is believed to be a mutiny aimed to eviscerate the state institution from within.

Admittedly, there is no right of appeal available under the Army Act. Section 133 of the Act explains that no appeal or application shall lie to any Court exercising any jurisdiction whatsoever (except to the Chief of Army Staff). However one can initiate the writ jurisdiction of High Courts and Supreme Court. The right to review is also available on grounds of coram non-judice, mala fide and without jurisdiction and the superior courts can review the sentences awarded under the Army Act.

Again ‘should it be’ and ‘can it be’ are abutting here but that is another thing the Parliament should look into. The fact is that Army Act has been amended many times and can be amended in the days to come.

The decision to try those involved in May 9 incidents is not unprecedented either. This is not the first time civilians are being tried under the Army Act.

Pakistan Army (Amendment) Act 2015 also provided explicitly that those involved in terrorism or attacking military installations could be tried by military courts under Army Act. Though enacted for a short period, it is no longer in the field, yet it is sufficient to cull this ambiguity about whether or not civilians can be tried under the Army Act. Supreme Court has also declared that a civilian can be tried under the Army Act. (2017 SCMR 1249)

Even in the tenure of Imran Khan’s premiership, 25 civilians were tried by the Military Court under Army Act. If it was unconstitutional and a violation of human rights, why did the Imran government remain silent on it? Wouldn’t it have been much better if the Imran government had amended a section of the Army Act as well?

Pertinent to mention here is the fact the Army Act has been amended many times, ( Most recently in Imran Khan’s government). Had there been any issue, the same should have been amended by the Parliament. As far as the law is there, things should go by the law. The Army Act is the law of the Land. The military court is established by the law of the state. The trial of civilians by this court under the Army Act is again the law of the state, sanctioned by the Parliament. Reaffirmation by both the Houses (National Assembly and Senate) through resolutions is also there that civilians involved in May 9 episode should be tried under the Army Act.

Should a civilian be tried under the Army Act is another thing and the Parliament must unravel this knot once and for all but as far as the legal position at the moment is concerned: yes civilians can be tried under the Army Act and there is no absolute prohibition for such a trial under the Constitution.

Now that the matter is in Court, let’s hope the confusion surrounding this subject will finally be culled.

*The writer is a lawyer and author, based in Islamabad. He tweets @m\_asifmahmood.*