**Civilians under military law**

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Military justice is a distinct legal system that applies to members of armed forces and, in some cases, civilians. Throughout numerous countries and times, including the First and Second World Wars, military courts have been used to adjudicate civilians for a very long time. Examples include the Ancient and Mediaeval Periods, Post-Colonial Periods, and Contemporary Periods. Pakistan, Argentina, Israel, Turkey, Thailand, China, Indonesia, Kuwait, Sri Lanka, Mali, Lebanon, Malaysia, Russia, Iran, India, Cuba, Djibouti, Eritrea, Kenya, Bahrain, Chile, Peru, Mexico, Philippines, Syria, Yemen, Bangladesh, Iraq, and Saudi Arabia are currently among the countries where civilians are occasionally and in special circumstances subject to military laws. However, the real legal frameworks and processes could be very different.

The Pakistan Army Act of 1952, the Pakistan Air Force Act of 1953, and the Pakistan Navy Ordinance of 1961 were the first pieces of legislation to create military tribunals for the purpose of punishing military personnel in Pakistan. However, there are a number of provisions and circumstances when the Military Act also applies to civilians. The first modification to Section 2[(d) of the Pakistan Army Act was made by the Defence Services Laws Amendment Ordinance, 1967 (3 of 1967), whereby the persons not otherwise subject to this Act came within the ambit of military laws being civilians and accused of seducing or attempting to seduce any person subject to this Act from his duty or allegiance to Government or having committed, concerning any work of defence, arsenal, naval, military or air force establishment or station, ship or aircraft or otherwise about the naval, military or air force affairs of Pakistan, an offence under the Official Secrets Act, 1923 as well. Under the Army Act of 1952, Civilians, however, can only be prosecuted by federal government order. According to the Army Act, the rules of evidence in proceedings before courts-martial are the same as those observed by regular civilian criminal courts. In addition, it is undisputed that, according to Article 10A of the 1973 Constitution, every person has a fundamental right to a fair trial.

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There are two issues and defences in favour of applying military law to civilians. According to one side of the argument, using military courts to try civilians undermines the civil judicial system, raises concerns about due process, transparency, and accountability, and may result in human rights violations. Supporters assert that, in order to successfully and swiftly prosecute offences connected to terrorism while upholding national security, military courts must be used. For the first time, the Apex Court carefully examined the legality and constitutionality of the “Brig (Retd) F.B. Ali’s case PLD 1975 SC 506,” concluding that a civilian who is ordinarily subject to the country’s ordinary law may be tried by a Military Court. In the aforementioned decision, the Supreme Court thoroughly assessed the validity of Ordinance No. 3 of 1967 from a variety of angles, including the touchstone of basic rights guaranteed by our Constitution, namely the Constitution of the Islamic Republic of Pakistan, 1973.

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In the case of Mushtaq Ahmad V/S Secretary Ministry of Defence PLD 2007 SC 405, the Apex Court upheld the law established in the “F.B. Ali’s” case, holding that if a civilian is found guilty of seducing or attempting to seduce a member of the Pakistani Military Force from his allegiance to the government, he will not be punished under section 131 of the Pakistan Penal Code but rather under the provisions of the PA Act or the PAF Because of the provisions of sections 59(4) of the Pakistan Army Act and 71(3) of the Pakistan Air Force Act, as well as Section 59 subsection 4 of the Pakistan Army Act 1952, which is a deeming provision and a non-obstante clause, the trial procedure specified by the Act of 1923 is superseded.

The 21st Amendment, unanimously approved by Parliament, after the Army Public School incident included the “Protection of Pakistan Act 2014,” “Pakistan Army Act 1952,” “Pakistan Air Force Act 1953,” and “Pakistan Navy Ordinance 1961” in order to exempt them from the application of Article 8 and the High Court’s ability to issue writs for any violations that, on the surface, appear to be inherent in the laws mentioned above. The Supreme Court was presented with this argument. The “Pakistan Army (Amendment) Act, 2015” and the “21st Constitutional Amendment” were not constitutionally impermissible, according to the majority verdict, since they were approved by the Parliament, which had the power to do both within the bounds of the Constitution.

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The Supreme Court ruled in Said Zaman Khan v. Federation of Pakistan (2017 SCMR 1249) that although the crime of which the convict was accused was punishable under the ordinary law of the lands and triable by a Criminal Court, therefore constituting a “civil offence” as defined by subsection (3) of section 8, and liable to be tried by the FGCM due to the provisions of that statute, even though the accused was a civilian, he participated in attacks against the Pakistan Army. The court explicitly declared that the Pakistan Army Act may apply to him even if he was a civilian due to his actions.

There is also a need simultaneously to make maximum efforts for taking all steps for holding fair military trials particularly where civilians are involved and have been charged under the military laws. The accused should have the right to legal representation of his choice, should be given enough time and space to prepare their defence, and should be given access to a lawyer at no cost if they are unable to pay for one. Additionally, the accused should have the right to justice and should have the principles of justice and due process in the form of the right of statutory appeal before High Court must be upheld as guaranteed under the Constitution. Maintaining the “innocent until proven guilty” rule is important in military trials.

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This is a fact that in recent political governments including the last in tenure, civilians were tried under the military laws, and their individual convictions were later on challenged before the Superior courts as per practice and laws, and some are still pending before the courts. Although civilians can be tried in Pakistan under military laws necessary legal provisions are in place, and the Superior Courts have up to this point endorsed these statutory provisions in various judgments. But still, there is an urgent need to concentrate on thorough judicial reforms to strengthen the civilian criminal justice system. Increasing the capability, independence, and effectiveness of civilian criminal courts to handle matters involving terrorism, national security, and other offenses often handled by military tribunals might be one way to achieve this. Time-limited trials, removal of outdated criminal laws and procedures with new legislation, specialized training for judges and prosecutors, infrastructure development, and sufficient funding for the civilian judiciary are a few examples.