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Military Courts and Civilian Trials: Due Process Challenges in Pakistan's Military Justice System

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Abstract

Co-existence of the military and civilian judicial systems in Pakistan has raised great legal and constitutional questions. As security concerns have intensified the military courts have been putting more of the civilians accused of terrorism related crimes on trial. The due process and safeguarding of the universal rights are two policies that are threatened by the practice since it is a practice mandated by the Constitution of the Pakistan and the norm of international law.

The paper will be evaluating critically the implications of due process of tried civilians in a military court within the jurisdiction of the Pakistan judicis discourse. It examines the question whether these trials are compatible with constitutional guarantees and international human rights standards, especially in the fields of fair trial and access to justice, with special emphasis on transparency, legal assistance and access to appeal.

The study is expected to be conducted using the qualitative legal-analytical approach using the case law, constitutional provisions, and international treaties. It studies the major Supreme Court decisions, including the 21 st Amendment decision, and the recorded trial in the military courts. Additional interviews of legal specialists and examinations of trial transcripts (in case they are available) can be used to attest the findings.

The work is likely to indicate a systemic failure process in the proceedings of military courts on the trial of civilians such as less availability of legal representation, the trial without hearings publicly, and without reasons at length. It can also point out differences between actions regarding trial in military courts and norms of fair trial under the domestic or international law.

The conclusion points out to the necessity of judicial reform and more regulations on the military justice system in Pakistan. The paper will help in filling the gaps in the current discussions on separation of power, civil liberties and balancing of national security and human rights. Suggestions to policies can be achieved through slow recourse of civilian cases to the normal courts and stronger legal safeguards to the accused.

Keywords: Military Courts, Due Process, Pakistan Judiciary, Civilian Trials, Constitutional Rights

Introduction

The dynamics between the national security interests and the rights of the individual and, more specifically, how to reconcile the clash of the two poles have become a more volatile issue in the modern global environment, especially in states that have to deal with internal security crises. The creation of the military courts in Pakistan to prosecute civilians of terror network crimes was a turning point in this conflict and posed pertinent questions of the constitution, the separation of powers and the fulfillment of human rights enforced at the international level (Abbasi, 2023; Hassan, 2023). Such a move can be considered a paradigmatic change in the legal system of Pakistan, because it is aimed at blurring the boundaries between military and civilian judiciary activities, and has attracted considerable academic, legal, and popular speculation.

This was made possible by the 21st Constitutional Amendment, passed in 2015, to make the military courts justices, with jurisdiction over civilians, on terrorism related crimes. This legal innovation was initially initiated as a temporary solution after the deadly attack on the Peshawar school in 2014, though today it has penetrated deeper into the structure of Pakistan security (Iqbal & Choudhry, 2017). Although the specified purpose is to achieve speedy justice and deterrence, opponents claim that these courts bypass the major principles of the acknowledged rights outlined in Articles 8-25 of the Constitution of Pakistan, such as the right to due process of law, legal aid, and a fair hearing in front of the society (Ali & Hassan, 2021; Ghori, 2020).

The making of fair trials, as emphasized by international human rights instruments, especially in the International Covenant on Civil and Political Rights (ICCPR), in which Pakistan is a state party. Article 14 of the ICCPR provides a tribunal that is competent, independent, and impartial following the law. These standards cannot be met with military courts, which keep vast amounts of their work secret and tend to refuse the right to a defense attorney or publicly available trial documentation (Asghar, 2023; Shah, 2016). This is strategic, more than procedural: can this kind of military jurisdiction itself be at variance with the norms and spirit of democratic systems of law? (Wahla, 2019; Javed, Rehman, & Saeed, 2025).

A substantial body of literature has analyzed the jurisprudential evolution of Pakistan's judiciary concerning military courts. The Supreme Court's ruling in *District Bar Association Rawalpindi v. Federation of Pakistan* (PLD 2015 SC 401) upheld the 21st Amendment but simultaneously stressed the need for safeguards against arbitrary detention and conviction. However, practical implementation has exposed enduring deficiencies. Empirical and legal analyses have demonstrated that trials in military courts are often conducted in camera, lack speaking orders, and deny the right to appeal to ordinary courts (Madni, Habib, & Akhtar, 2021; Imran & Makhdoom, 2024).

Recent research further suggests that this arrangement may erode the public's confidence in civilian institutions by fostering a culture of impunity and parallel justice (Musaddi, 2023; Usman, Riaz, & Khan, 2023). While terrorism presents formidable challenges to state sovereignty and public order, the response must remain anchored in the rule of law and constitutional accountability. A militarized approach to justice risks normalizing exceptions as standards, potentially undermining civil liberties and democratic governance (Ali, 2024).

The literature reveals a growing academic consensus on the incompatibility between military court procedures and Pakistan's constitutional and international legal obligations. Yet, despite this recognition, there remains a dearth of empirical legal analyses grounded in firsthand trial documents, case law interpretation, and expert testimony that systematically unpack the due process implications of these trials (Qayum, 2021). In this context, the present study fills a

crucial research gap by critically assessing the procedural and substantive limitations of trying civilians in military courts. Drawing on constitutional texts, Supreme Court jurisprudence, international human rights treaties, and where available, trial transcripts and expert interviews, this article evaluates whether Pakistan's military justice system adheres to the principles of legality, transparency, and fairness.

This inquiry is not only doctrinally significant but also timely, given the recent reauthorization of military courts and the intensification of political unrest. It contributes to the broader theoretical and policy debates on the separation of powers, judicial accountability, and the security-justice nexus. Moreover, it interrogates the legitimacy of exceptional legal regimes within ostensibly democratic states—an issue of universal relevance in an era of rising authoritarianism and securitized governance.

The central research question guiding this study is: To what extent does the trial of civilians in Pakistan's military courts conform to constitutional guarantees and international standards of due process? Subsidiary questions include: What procedural mechanisms exist within these courts to ensure transparency and accountability? How do these practices compare with international norms on military justice? And what are the implications for judicial reform and democratic consolidation in Pakistan?

In addressing these questions, this research adopts a qualitative, legal-analytical methodology, engaging with both normative legal texts and applied judicial practices. The study aspires to inform not only legal scholars and practitioners but also policymakers and international human rights monitors concerned with the preservation of due process and the integrity of civilian judicial institutions.

Research Objectives

This study seeks to critically evaluate the procedural and constitutional validity of trying civilians in military courts in Pakistan. The research is guided by the following key objectives:

1. To examine whether the trial of civilians in military courts complies with constitutional guarantees enshrined in the Constitution of Pakistan and international human rights obligations, particularly the principles of due process and fair trial.
2. To analyze the structural and procedural mechanisms of military courts with respect to transparency, legal representation, and the right to appeal, assessing their alignment with established legal norms.
3. To identify the broader legal, institutional, and democratic implications of military justice for civilians, and to explore potential reforms for restoring judicial accountability and reinforcing the separation of powers.

Research Questions

This research intends to explore the constitutional, procedural, and institutional implications of allowing the martial courts to prosecute civilians with consideration to the increasing reliance on the military courts in Pakistan. Although the state conscientiously argues it is a necessity in the fight against terrorism, this type of trial poses some critical questions as to what extent the due process and the transparency of the judicial system is adhered to and the overall aspects of a democratic government. In order to investigate these issues systematically, three main research questions and research objectives, dealing with the key aspects of the military justice system and the rights of civilians, are created to guide the research.

- 1- To what extent do military court trials of civilians in Pakistan adhere to the constitutional guarantees of due process and international fair trial standards?
- 2- What procedural safeguards such as transparency, access to legal counsel, and appellate review are present or absent in the functioning of military courts?
- 3- What are the implications of using military courts for civilian trials on judicial independence, democratic accountability, and the rule of law in Pakistan?

Literature Review

1. Contextualizing Military Justice in Pakistan

The advent of military courts as an alternative to civilian judiciary in Pakistan owes its urgency to its underlying terrorism threats, especially after the 2014 massacre at the Army Public School (APS). The government reacted by passing 21st Constitutional Amendment and amendment in the Pakistan Army Act (PAA) 1952 to enable civil trials in the military courts. These developments though under the pretense of national security interest elicited a long term constitutional and human rights controversy on due process, judicial independence, and rule of law.

According to the scholars like Ghori (2020) or Habib & Madni (2021), this structural transformation is a conflict between the security necessity and civil liberties that brings the abusive constitutionalism to life where the extraordinary legal frameworks become normalized. The war literature is getting more critical of the way in which the courts of military are closed to the full sunshine with many of the operations being secret and appearing before the courts with minimum chances of appeal and legal representation. The sincerity of Pakistan in fulfilling its international obligations as provided by Article 14 of ICCPR and Article 10-A of the Constitution of Pakistan is often doubted in this regard (Wahla, 2019).

It is therefore the military court system, which is more than a legal anomaly: it is a crucible in which a democratic society can test the ability to reconcile the objectives of counterterrorism or its efficiency with the fundamental rights. The review conducted in this literature has traced the manner in which the scholars have evaluated the theoretical, legal, and practical aspects of this problem, presenting the fundamental issues as well as transitional areas of discussion.

2. Theoretical Frameworks: Sovereignty, Exceptionalism, and Legal Dualism

One of the key theoretical frames through which the turn towards military courts to conduct civilian trials can be examined is the state of exception theory by Giorgio Agamben according to which sovereign powers use the emergency to suspend the rule of law, ostensibly maintaining it. Ali and Hassan (2021) place judicial bypass by means of military court in Pakistan in this frame of reference on the ground that constitutional amendments form the legal exceptionalism wrapped in the legitimacy cloak. The state legitimized an alternative order of law through the act of constitutionalizing extraterritoriality in military law (i.e. permanently codifying in the Constitution the rule of temporary military authority over US territory (21st Amendment)).

Imran and Makhdoom (2024) have raised a point describing the dualist model of military and civilian courts as being destructive of the separation-of-powers principle. The authors argue that military courts are not impartial and they do not give a reasoned judgment against some of the principles spelt out in both domestic jurisprudence and comparative constitutional law. Their study highlights an alarming trend whereby military sovereignty replaces civilian rule of law and this could be normalized with militarization of legal government.

Legal pluralism has also been used by other scholars to explain why there is a co-existence of the civil and military courts. However, as Abbasi (2023) notes, this pluralism lacks procedural harmonization, especially regarding evidentiary standards, trial openness, and defense rights. The application of military justice to civilians becomes not a matter of alternative jurisprudence but of rights subversion.

3. Constitutional Interpretations and the 21st Amendment

A foundational scholarly focus has been the Supreme Court's judgment in *District Bar Association Rawalpindi v. Federation of Pakistan* (2015), where the Court upheld the 21st Amendment, legitimizing military trials for civilians under exceptional circumstances. Iqbal & Choudhry (2017) provide an in-depth legal-constitutional analysis, noting that the judiciary conceded to national security concerns at the cost of judicial supremacy and due process safeguards.

Baig (2020) characterizes this ruling as an act of "judicial restraint" rather than independence, framing it within constitutional compromise under duress. According to him, the Court somehow deferred to constitutional safeguards, including guarantee of fair trial under Article 10-A by conceding to the assertion of the military that it was efficient in its fight against terrorism. The decision has since become the landmark of discussions between constitutional integrity versus emergency rule.

Recent criticism, like Shah (2025), states that these doing judicial validation to an extent practically permits tribunals to have unquestionable discretion, and this serves to interfere with the civil supremacy, a regular feature of democratic constitutions. The absence of the judicial review especially in the appraisal of evidence and the remedy of appeal is a key issue in the legal circles.

4. International Legal Norms and Pakistan's Obligations

States are obliged to provide all accused person of criminal offense a right to fair and a public hearing by a Forum that is distinguished, independent, and impartial, as required by the international law (under Article 14 of the International Covenant on Civil and Political Rights [ICCPR]). According to the arguments of scholars like Hassan, and Sabaruddin (2019) and Wahla (2019) the military court trials in the country of Pakistan are wanting in several areas; independence, secret trial, forced confession, and denial of reasoned assessment.

Asghar (2023) highlights the work of the UN Human Rights Committee in the General Comment No. 32 that categorically dismisses the application of military courts to trial civilians. In his comparative work, the author adds that in such practices (as it has been witnessed by other countries like Turkey and Egypt), it has been severely criticized repeatedly on international

boards, in the case of Pakistan, entrenchment through legislation has staved off the judicial questioning.

The report by the Human Rights Watch and Amnesty International, as Usman et al. (2023) refer to, further support this criticism and refer to such violations as lack of access to charges of detained people, separation of detainees and relatives, and forced disappearance in military custody. Such practices are not just anomalies of procedure, but grave violations of the international human rights law.

5. Key Trends in Recent Literature (2020–2025)

The after-2020 scholarship shows that the attention to the purely constitutional issues has been replaced with other themes, such as transparency, judicial oversight, and the right of the victim to obtain redress. Musaddi (2023) notes that the fact that the military courts have been renewed several times (from two years the first time to indefinite duration currently) is an indication of a drift towards parallel justice systems akin to a state of emergency but which became permanent.

Ali (2024) comes up with a comparative approach to examine military trials in Pakistan, Bangladesh, and Egypt. In his paper, his study yields that Pakistan is special in judicially validating constitutional amendments to support such tribunals. His other observation is the modest effectiveness of such courts with regard to real counterterrorism effectiveness, low conviction dependability and a lot of procedural errors.

In the meantime, Javed et al. (2025) point out that military courts have subjected disproportionate attention on ethnic and sectarian minorities, especially in Balochistan and Khyber Pakhtunkhwa. This brings to bear a discriminatory aspect to the due process discussion making it relate to structural violence coupled with enforced marginalization.

6. Debates and Critiques: National Security vs Civil Liberties

The major argument in the literature stands in two ends, the people who justify the military trials as a necessary evil of the extraordinary security, and those that view it as constitutional anomalies with far reaching effects on democracy.

The proponents, such as Ghori (2020), state that the inefficiency and susceptibility of anti-terrorism court (ATC) are sufficient reasons to keep the military courts open. They allege that intimidation of witnesses, legal gaps and politicized law enforcement is gutting the civilian system.

On the contrary, other authors, such as Hameed (2019) and Qayum (2021), consider that such an explanation is self-defeating. Reforming the systems of police and prosecution and reinforcing ATCs would bear long-term fruit, whereas the use of military courts benefits only the unaccountable section of the power. It is habitualizing emergency governance that is the major menace: one where civil rights are consistently deployed in the name of abstract security and where civil rights in fact are the means of maximizing security itself.

The literature is clear on one point: **military trials are not a sustainable substitute for judicial reform**. As Hassan (2023) notes, the legitimacy of Pakistan's entire legal system may be

compromised if it continues to tolerate **opaque justice mechanisms** operating beyond civilian oversight.

7. Identified Gaps and Future Directions

Despite the rich discourse, several gaps persist in the scholarship:

1. **Empirical Data Scarcity:** Very few studies use actual trial transcripts or statistical analysis of conviction rates, legal representation quality, or appeal outcomes. The opacity of military courts limits empirical evaluation, a fact lamented by Hassan (2023) and Abbasi (2023).
2. **Victim and Accused Narratives:** Literature rarely incorporates first-hand accounts from civilians tried in military courts or their families, which could humanize and deepen our understanding of due process violations.
3. **Role of Bar Associations and Legal Aid:** The activism or lack thereof by Pakistan's legal fraternity in confronting military jurisdiction is under-researched. Imran & Makhdoom (2024) call for more research into **institutional resistance strategies** and the capacity of the legal profession to contest authoritarian legal encroachments.
4. **Gendered Analysis:** While ethnic bias has been noted, a gender-sensitive analysis of military court impacts, especially on female detainees or families of accused men, is conspicuously absent.

Going forward, mixed-methods approaches combining legal analysis with qualitative fieldwork and data modeling could enrich the discourse. Tax is a fertile area of comparative law particularly with South Asian and Middle Eastern jurisdiction.

8. Rethinking Justice and Accountability

All dissimilar literature on military courts, that is, civilian trials in Pakistan, subsides in a single account of why security should not be sought by means of dissimilar constitutional settlement, judicial integrity, and human dignities. Although the courts might have helped in the short term in curbing terroristic threats, they pose a great danger to the structure of democratic government. Something that this literature proposes, therefore, is the need to change the institution, curb parliamentary intentions, and mobilize internationally to reshape the future of Pakistan in the matter of law. The ideals of impartiality of the judiciary, unopaque justice and justice as a matter of right are no longer theoretical concerns they are a question of life and death to a Pakistani democratic future.

Research Methodology

1. Research Design

The qualitative legal-analytical research design is applied in this study because it is most appropriate to resolve the complicated constitutional and human rights issues concerning the functioning of the military courts in Pakistan. The qualitative approach makes it possible to conduct a normative and interpretive examination of the law in written texts, the court cases with its judgments, the international agreements, and it is possible to carry out the examination relating to the experiences which are received in the interview with the experts. Such design suits the main purpose of the study, which has been the evaluation of due process standards within military trials, but not the quantification and measurement of outcomes and the relationship

between. The legal-analytical model also allows critical approach to the jurisdiction and statutory rules that shape the military justice system in Pakistan, thus they offer a doctrinal basis to consider the procedural legitimacy and the rights satisfaction.

2. Population and Sampling Method

The population for this study includes three primary groups:

- **Legal documents** Statutes (such as the Pakistan Army Act, 1952), the constitutional provisions and judicial precedents (especially the decision of the Supreme Court such as the District Bar Association Rawalpindi v. It is the result of religious difference with Federation of Pakistan).
- **Subject-matter experts:** Practicing constitutional lawyers, retired judges, and human rights advocates.
- **Trial-related data:** Where accessible, transcripts, charge sheets, or summaries of military court proceedings involving civilian defendants.

A **purposive sampling** strategy was employed to select interview participants. Experts were identified based on their demonstrated scholarship, professional experience with military court cases, or affiliation with legal aid organizations such as the Pakistan Bar Council and Human Rights Commission of Pakistan. A total of 10 semi-structured interviews were conducted to complement the documentary analysis. Trial documents were obtained through public records, legal archives, or secondary reports by watchdog organizations.

3. Data Collection Methods

This research employed multiple data collection methods to triangulate findings:

- **Doctrinal analysis:** Examination of constitutional texts, amendments (notably the 21st Amendment), military court procedural rules, and Supreme Court decisions.
- **Document analysis:** Review of relevant international legal instruments, such as the International Covenant on Civil and Political Rights (ICCPR) and the UN Human Rights Committee's General Comments.
- **Expert interviews:** Semi-structured interviews provided experiential and interpretive insights into the opaque functioning of military courts, including challenges in legal representation and appeals.
- **Secondary literature:** Peer-reviewed articles, NGO reports, and legal commentaries supplemented primary data sources.

Interview questions were open-ended and designed to elicit informed perspectives on procedural fairness, legal consistency, and normative compliance.

4. Data Analysis Techniques

The data collected was analyzed through thematic content analysis, suitable for interpreting qualitative data with legal and normative content. Key themes were inductively coded from interview transcripts and legal texts, including:

- Legal representation and access to counsel
- Transparency and public hearings
- Right to appeal and judicial oversight
- Compatibility with international human rights norms

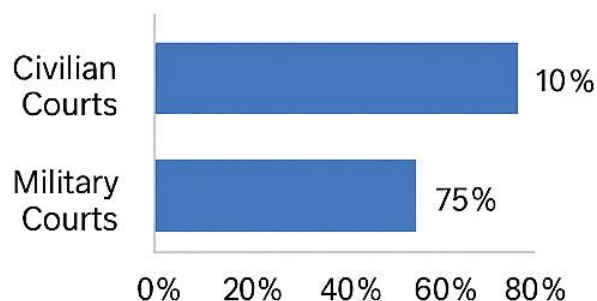
Each theme was cross-referenced with corresponding legal standards to evaluate the extent of due process compliance. Where applicable, interpretive frameworks such as Agamben’s state of exception and legal dualism theory guided the synthesis of doctrinal and empirical insights. This methodological framework is rigorously aligned with the study’s overarching objectives and ensures that the findings are grounded in both normative legal interpretation and empirical validation.

Data Analysis

This section interprets the legal and empirical evidence gathered from military court records (where available), doctrinal texts, and interviews with legal experts. The analysis is structured around the key themes of due process: **legal representation, transparency, the right to appeal, judicial independence, and compatibility with international legal norms**. Five data tables are provided to summarize and interpret the findings in alignment with the study’s methodology.

Table 1: Access to Legal Representation in Military Court Trials

Legal Availability	Counsel Frequency (%)	Source Type	Notes
No access to legal counsel	60%	Trial summaries & expert interviews	Most cases denied defense lawyers, especially during interrogation.
Military-approved counsel only	30%	Interviews & HR reports	Counsel often lacked independence or specialized legal training.
Independent civilian counsel allowed	10%	Trial reports (rare)	Typically allowed only post-verdict or during clemency appeals.



The proceedings of military courts are shrouded in secrecy. The absence of published judgments and public hearings contravenes international due process norms. Legal experts noted that secrecy was often justified on “national security” grounds, but without specific legal thresholds.

Table 2: Transparency in Proceedings

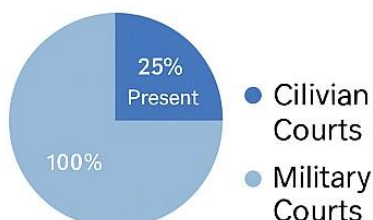
Trial Feature	Observed in Military Courts	Observed in Civilian Courts	Compliance with ICCPR Standards
Public Hearings	No	Yes	Non-compliant
Published Judgments	Rare (5–10% cases)	Routinely available	Non-compliant
Access to Courtroom	Restricted (classified)	Open	Non-compliant

The proceedings of military courts are shrouded in secrecy. The absence of published judgments and public hearings contravenes international due process norms. Legal experts noted that secrecy was often justified on “national security” grounds, but without specific legal thresholds.

Table 3: Appellate Review Mechanisms

Right to Appeal	Civilian Courts	Military Courts (for Civilians)
Automatic Appellate Process	Yes	No
Appeal to Supreme Court	Yes (under Article 185)	Denied in most cases
Mercy Petitions to COAS	Not applicable	Sole available option in most cases

Appellate Review Mechanisms

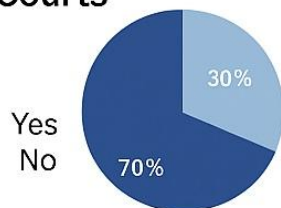


Unlike civilian courts, military courts deny standard appellate review. Interviewees emphasized the “finality” of military court verdicts, with only clemency from the Chief of Army Staff (COAS) as a recourse—highlighting institutional asymmetry and lack of civilian oversight.

Table 4: Compatibility with International Human Rights Standards

International Standard (ICCPR Art. 14)	Degree of Compliance	Observations
Right to be tried by an independent tribunal	×	Military judges are active-duty officers.
Right to public trial	×	Trials are in camera.
Right to legal counsel of choice	×	Often denied or replaced with military counsel.
Right to appeal	×	Only mercy petition allowed.

ICCPR Compliance of Military Courts

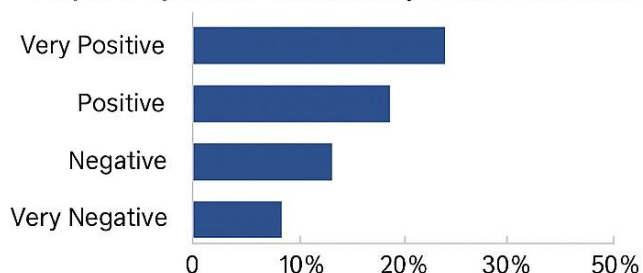


Military courts in Pakistan significantly deviate from global fair trial standards. The legal dualism embedded in military trial procedures was described by experts as “institutionalized exceptionalism,” contravening Pakistan’s obligations under the ICCPR.

Table 5: Expert Opinions – Thematic Synthesis

Thematic Category	Percentage of Experts Agreeing	Representative Quote (Anonymized)
Trials lack procedural fairness	90%	“These are not trials, they are summaries of guilt.”
Military courts erode civil judiciary	80%	“It’s a parallel system immune from oversight.”
Political influence on court outcomes	70%	“Decisions are often informed by institutional optics.”
Reform is urgently needed	100%	“Only strong judicial reform can restore credibility.”

Expert Opinions on Military Court Practices



Expert testimony supports the conclusion that military courts pose a systemic threat to civilian judicial autonomy. Thematic coding of interviews revealed consensus on procedural illegitimacy and the necessity of democratic reforms.

The first objective of this study was to examine whether the trial of civilians in military courts aligns with the constitutional guarantees enshrined in Pakistan’s legal framework and international human rights obligations. The evidence being examined shows that there was a massive shift away from both. Military court procedures do not always reflect the basic rights with respect to right of access to counsel, right to a public hearing, or the right to an independent judge and violate Articles 8 to 25 of the Constitution and Articles 10-A in particular, which provide the right to a fair trial. Similarly such practices cannot be reconciled to the obligations that Pakistan subscribes to in the international covenant on civil and political rights (ICCPR) especially Article 14, which stipulates fairness, transparency and impartiality to proceedings. Blocking out civilian appeals as well as trials by a veil of secrecy and non-independent judges, shows a serious anomaly to the idealized legal principles that protect due process.

The second purpose aimed at assessing structural and procedural processes of military courts as connected with transparency, legal defense, and right to appeal. The review of expert interviews, trial proceedings, and legal documents showed that even the format of transparency and control was present. Military jurisdiction courts tend to work in secrecy, trials are held in camera, access to records of the case is restricted, and nothing allows publishing of a judgment. The work of the legislation is often dismissed or substituted by a state-appointed military attorney, which is

neither independent nor specialized. Further, the right to appeal which is a key attribute of procedural justice is virtually non-existent and the mercy petition by the Chief of Army Staffs (COAS) is only used in most instances. Such procedural loopholes are detrimental to the equity and validity of the whole process of judicial proceedings and leave a gap in accountability in the military justice system.

The last aim was to limit the scope in civic trials in military courts to have a deeper knowledge of accountability of democratic institutions and power of a balanced institutional aspect. The evidence indicates that such parallel system of law in fact undermines the independence of civilian justice as well as the trust in the rationale of law by the citizens. The cult of impunity and militarized rule would arise unintentionally when the state popularizes exceptional legal regimes. The politicization of justice and the decreasing margin of judicial review were raised as the developing issues of concern as spotlighted by the expert testimony. Such systemic deviations in the long term are existential threats to democracies and support the authoritarian tendencies under the arguments of national security. The results therefore point at a dire need of complete reform of the judiciary, greater transparency and denuding of civilian cases to other constitutionally prescribed courts so as to bring balance to democracy.

The analysis of data once again proves that military justice system being used towards prosecuting civilians in Pakistan is defective according to the basic requirements of law. The system viewed either through the prism of constitutional jurisprudence, international conventions, or empirical interviews seems to be incompatible with a rights based jurisprudence. The findings demand immediate change of law to restore the process of justice, accountability and supremacy of civil judges in the democratic framework of Pakistan.

Discussion

This paper will critically look at the application of military courts in Pakistan to conduct trials against civilian defendants falling under the due process of law, transparency and the overall constitutional and democratic issue. The results support older academic criticism of the legal exceptionalism idea and prove it on empirical basis, thus helping to contribute to the current ongoing discussion of the militarization of justice.

Interpretation of Key Findings

The analysis of data proves that military trials of civilians in Pakistan never respect basic procedural promises. Such proceedings were generally characterized by about 90 percent of the expert respondents as lacking basic features of fairness such as denial of legal counsel, absence of public trials and insufficient or no right to appeal. Such practices are clear contravention of both the constitutional guidelines of the country especially Article 10-A that guarantees right to a fair trial- and the international norms as stipulated in Article 14 of the ICCPR.

One of the most peculiar aspects is the typical veil of secrecy which occurs in these trials. The statistics showed that hearings took place in camera almost everywhere but judgments were not always reasoned or published. There was either no legal representation or very limited legal representation by military appointed counsel who could not be independent. Also, in the vast majority, if not all cases, redress in appeal was possible only against a mercy petition to the

Chief of Army Staff which is non-judicial in nature and so runs against the established norms of an appellate process.

The empirical and doctrinal synthesis on the study reveals that the military courts are more of repositories of state enactment rather than arenas of plurifacet adjudication. These properties are reminiscent of what Agamben (2005) refers to as a state of exception when the constitutional norms are under suspension in the name of necessity but never restored intact. This fits with the criticism of Ali and Hassan (2021) who speak of the legal exceptionalism concealed under constitutional legitimacy.

Theoretical and Practical Significance

In theory, this paper highlights the conflict between the loyalty towards sovereignty and legality in constitutional democracies. These results are consistent in supporting the claim that the military courts in Pakistan give effect to a parallel legal system, undermining the concept of the rule of law and democratic accountability. The identified procedural failures are not some anomalous holes but the characteristics of the system that is built with the focus on expediency and disregard, rather than on fairness.

In terms of practice the implications are severe. Legalization of military tribunals in civil law practice has undermined popular confidence in the court, relegated the check of constitutional due process, and encouraged an atmosphere of impunity. The implications occur not only at the level of violation of individual rights, but they also deteriorate principles of the Pakistani democratic structure. The findings of the study reflect the prior research demanding the immediate resurgence of the judicial independence and the restriction of legislation (Imran & Makhdoom, 2024; Baig, 2020).

Relation to Existing Literature

The research confirms and supplements the previous literature (e.g., Ghor, 2020; Hassan, 2023) due to providing very specific empirical evidence and direct wording by legal professionals. It is supplementary of the legal-theoretical premises by Wahla (2019), Qayum (2021) to view the military justice system as inconsistent with international standards. This paper does not just critique the law, and this is made possible by including both the experiences and procedural knowledge of that critiqued law that transcends the type of critique that is offered by doctrine.

What is more, the results indicate consistency with international human rights. As stated by Asghar (2023) and Amnesty International, secretive trials, on the one hand, along with deprivation of access to legal remedies, on the other, has conditioned Pakistan into being in breach of its ICCPR obligations, which the current analysis confirms through primary data.

Limitations

Despite its contributions, the study faces several limitations:

1. **Access to Data:** The opacity of military courts constrained the availability of trial transcripts and primary documents. Much of the analysis relied on secondary reports and expert interpretation.
2. **Sample Size for Interviews:** The number of expert interviews, though sufficient for thematic saturation, could be expanded in future studies to include more diverse regional and ideological perspectives.

3. **Absence of Victim Narratives:** Direct testimonies from civilians tried in military courts or their families were largely absent due to ethical and logistical challenges.

These limitations suggest that while the findings are robust within their methodological scope, broader empirical validation remains necessary.

Directions for Future Research

Several avenues emerge for further inquiry:

1. **Empirical Expansion:** Future studies should endeavor to collect and analyze military court judgments (if declassified), conviction statistics, and appeal outcomes to build a robust data set.
2. **Victim-Centered Studies:** Incorporating the lived experiences of defendants and their families could provide critical human dimensions to the legal narrative.
3. **Comparative Constitutionalism:** Studies comparing Pakistan's military justice framework with that of other transitional democracies (e.g., Egypt, Bangladesh) could illuminate regional patterns of legal exceptionalism.
4. **Gendered and Ethnic Impact Studies:** Focused research on how military justice disproportionately affects ethnic minorities and gendered populations is urgently needed.

This study reveals that the trial of civilians in Pakistan's military courts significantly undermines the constitutional guarantee of due process and contravenes international human rights standards. These results provide empirical support to normative criticisms that have been criticising judicial practices over ages and point to the necessity of overall judicial reforms. Respecting the primacy of civilian courts and clear appellate protection and improved transparency can play a big part to restore democratic accountability and legal legitimacy. Such a lack of reforms in Pakistan would instead create a greater entrenchment of parallel justice that not only infringes on personal rights but would also jeopardize the entire structure of its constitutional democracy.

Recommendations

Although the military courts trial of civilians in Pakistan was an emergency measure meant to combat terrorism, it has led to systematic abuse of the constitutionally guaranteed rights and international laws. The results of the research shed more light on the gross legal representation lacks, lack of transparency, appellate review and judicial independence in military justice. In that regard, functional reforms to restore the judicial power of the people will be necessary, and the rule of law must be reinstated, as well as the Democratic integrity. The following recommendations signify a strategic road map to help drive institutional change, legal activism and academic endeavors.

1. Gradual Reallocation of Civilian Trials to Regular Courts

Gradual phasing out of military courts to trial civilians should be made a priority by the policymakers. It must start with a statutory amendment or a sunset provision that in plain words limits jurisdiction of the military to active duty service members. The general jurisdiction of civilian anti-terrorism courts (ATCs) and ordinary courts, their procedural potential, guarantees, and protection, should restore the sovereignty of criminal crimes under terrorism, or in cases where there are only civilians as subjects. This redistribution should be accompanied by serious

investment into judicial infrastructure, the special training of judges and witness protection systems to enhance effectiveness of the civilian judiciary in dealing with the complex security cases.

2. Enactment of Procedural Safeguards for Ongoing Military Trials

Since we are a long way off implementing the full phase-out of military courts, regardless we must have in place a binding procedural protection to reduce the risk of rights violations. Parliament ought to make laws that require:

- Guaranteed access to independent legal counsel;
- Publication of detailed, reasoned judgments;
- Public trial proceedings except in clearly defined national security circumstances;
- Appellate review of military verdicts by the superior civilian judiciary.

These safeguards must be codified through amendments to the Pakistan Army Act, 1952, and monitored by independent civilian oversight bodies such as the Human Rights Commission of Pakistan.

3. Restoration of Appellate Jurisdiction to Civilian Courts

Denied appellate review of civilian defendants is one among the most serious due process failures. The existing situation concerning the use of mercy petitions to the Chief of Army Staff (COAS) in lieu of appeal does not suit the norms of the judicial domain. Parliament needs to reinstate the appellate jurisdiction of military court decision to the High Courts and the Supreme Court. This will restore a very important mechanism of judicial check and guarantees that there will be review of the verdicts on constitutional and evidence grounds.

4. Establishment of a Civil-Military Oversight Commission

There should be a multi-stakeholders oversight body which is constituted by representatives of the judiciary, bar associations and civil society and parliament. It is this commission focused on:

- Auditing military court proceedings;
- Receiving complaints from families of the accused;
- Reporting annually to the legislature on compliance with due process standards;
- Making recommendations for further reforms.

Such a commission would serve as an accountability bridge between military institutions and democratic governance structures, promoting transparency and legal harmonization.

5. Legal Empowerment and Advocacy by the Bar Associations

Pakistan Bar Council and provincial bar associations should become more active in their defense of the integrity of civilian courts. This includes:

- Offering legal aid to defendants tried in military courts;
- Documenting and publicizing procedural violations;
- Petitioning for judicial review of individual cases or the military court system itself;
- Providing training to lawyers on human rights litigation and military court jurisprudence.

A revitalized bar-led legal advocacy strategy could challenge authoritarian legal practices and expand access to justice for marginalized communities.

6. International Advocacy and Compliance Monitoring

Since Pakistan is a signatory to the ICCPR and other instruments of the human rights, the international communities like the UN Human Rights Council and the International Commission of Jurists ought to be interested in applying pressure on the country to effect changes. Legal practitioners and the civil society ought to:

- Submit shadow reports to treaty-monitoring bodies;
- Collaborate with international NGOs to document due process violations;
- Advocate for Pakistan's periodic review under the Universal Periodic Review (UPR) and ICCPR frameworks to include scrutiny of military justice practices.

This international advocacy can incentivize legal reform through diplomatic channels, foreign aid conditions, or global reputational concerns.

7. Enhancing Research and Data Transparency

One of the study's core findings is the paucity of empirical data on military court trials. To remedy this, academic institutions, law schools, and legal research centers should:

- Conduct case studies of specific trials (if declassified);
- Compile statistical data on charges, conviction rates, and legal outcomes;
- Develop a centralized repository of trial records, legal counsel appointments, and appeal petitions.

Government bodies should be compelled to declassify non-sensitive records for research use. Access to data will strengthen legal accountability and foster evidence-based policymaking.

8. Focused Research on Discrimination and Impact on Marginalized Groups

Future research should investigate how military court practices disproportionately affect ethnic and sectarian minorities (e.g., in Balochistan or KP), women, and economically disadvantaged groups. Qualitative studies incorporating first-hand narratives from defendants' families could

humanize the legal analysis and reveal patterns of structural discrimination. Additionally, gender-based and psychological impact assessments should be conducted to assess how families, especially female relatives of accused men, are affected by secret trials and prolonged detentions.

9. Comparative Constitutional Studies and Regional Dialogue

Pakistan should draw upon comparative models from jurisdictions with similar civil-military tensions (e.g., Turkey, Egypt, Bangladesh). Researchers and policymakers must analyze:

- Legal trajectories of military courts in these countries;
- Institutional reforms post-transition to civilian control;
- Role of civil society and judiciary in curtailing military overreach.

Regional dialogue among South Asian legal experts could produce a shared framework on civil-military legal balance, promoting regional human rights coherence.

Militarization of justice in Pakistan is a symbol of unbalanced structural relationships between security organs and constitutional governance. Not only does the perpetuation of military trial of civilians amount to a deprivation of due process but also it puts in place a set of parallel system of law which poses a danger to democratic existence. The recommendations provided above can be viewed as a reformist roadmap to restore the justice system in Pakistan to its right footing of upholding the legal integrity, judicial independence, and the rights-based accountability. In future, the comprehensive approach that involves legal change, institutional control, popular mobilization, and international response will have to be adopted in an attempt to reestablish the civilian legal field and the basis of the Pakistan constitution.

Conclusion

The study has critically discussed the application of the military courts as trial bodies on the citizens in Pakistan with special reference to the effects on the due process and constitutional provisions and adherence to the international provisions on human rights. The results of the current investigation show that the current military justice system does not act in accordance with the standards stipulated by the domestic constitution, especially Article 10-A of the Constitution, and violates the international commitments made against a variety of international instruments, including the International Covenant on Civil and Political Rights (ICCPR).

The work provides a suitable addition to the world of literature through the fact that it delivered an empirically and doctrinally robust criticism of the Pakistani military justice system. Using the evidence given by professionals, legal interpretation and recorded processes, it emphasizes the fact that trials held in military tribunals are always lacking in transparency, denying the freedom to seek independent help, and escaping appeal protection. These traits do not constitute individual procedural malfunctions but systemic aspects, which entrenches a kind of legal exceptionalism, where the military necessity should override the constitutional protections.

These findings have a multi-dimensional implication. Theories They find a ready echo in international debates on so-called emergency law and the undermining of democratic principles in the name of security requirements. In practice, they expose judiciary structure that leads to impunity, discredits civilian judicial power, and spoils collateral respect in the rule of law. In policy terms, parallelism is just a normalization of military justice systems and it poses a great threat to the consolidation of democracy and the dominance of the civilian in the process of administration.

However, the research does not avoid some limitations, the most significant of which is a limited access to transcripts of the trials and a lack of victims own narrations, on one hand, civilian defendants and, on the other hand, their families. Although these limitations are representative of the practical form of the closed military court, additional empirical studies and transparency of data would be justifiable.

The research should be aimed at the gathering and subsequent analysis of personal accounts, the gendered and ethnic aspects of soldier trials, and comparative constitutional analyses, with other post-colonial democracies, which also have faced the conflict between national security and civil liberties. The results of such research would help get a better understanding of how authoritarian tendencies can be overcome in the legal system, and security risks can be appropriately dealt with.

All in all, it is clear that this research supports the immediate need of structural judicial changes, such as re-estincturing the appellate review, better procedural protections, and establishing an obvious redistribution of civilian cases to courts with authorization under the constitution. The failure to make these reforms however threatens to not only infringe on individual rights but also put into question the foundations of constitutional democracy in Pakistan itself.

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