
Pakistan Military Courts and the Right to Fair Trial: A Comprehensive Research Analysis

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Abstract

The trial of civilians by military courts in Pakistan constitutes one of the most significant constitutional and human rights controversies in the country's contemporary legal landscape. Initially introduced as a temporary and exceptional response to terrorism following the 2014 Army Public School attack, military courts were justified on grounds of expediency and national security. However, the gradual expansion and normalization of their jurisdiction over civilians have raised serious concerns regarding their compatibility with constitutional guarantees of fair trial and Pakistan's international human rights obligations. This paper undertakes a qualitative doctrinal and comparative legal analysis to examine whether military court proceedings align with Article 10A of the Constitution of Pakistan and the fair trial standards enshrined in Article 14 of the International Covenant on Civil and Political Rights (ICCPR). Focusing on the conflicting Supreme Court decisions of October 2023 and May 2025, the study highlights systemic deficiencies in military court proceedings, including the absence of judicial independence, lack of transparency, restricted access to legal representation, and ineffective appellate review. The paper argues that the continued trial of civilians by military courts is constitutionally unsustainable and normatively inconsistent with international human rights law. It concludes by proposing evidence-based legislative and institutional reforms aimed at reconciling national security concerns with constitutional supremacy and fair trial guarantees.

Keywords: Military Courts, Fair Trial, Article 10a, Judicial Independence, Pakistan Constitution, ICCPR, Supreme Court Jurisprudence, Human Rights, National Security, Judicial Reforms.

1. Introduction

The trial of civilians by military courts remains one of Pakistan's most contentious constitutional and human rights issues, attracting sustained judicial, academic, and international scrutiny (Khan & Jaffari, 2023; Jamali et al., 2024). Established in 2015 through the Twenty-First Constitutional Amendment and amendments to the Pakistan Army Act, military courts were originally conceived as a temporary and exceptional mechanism to address extraordinary terrorism-related challenges following the Army Public School attack (Hussain, 2018). While framed as an emergency response to an existential security threat, the continued reliance on military courts to try civilians has generated profound constitutional controversy, particularly in relation to the right to a fair trial guaranteed under Article 10A of the Constitution of Pakistan (Amnesty International, 2023).

The Supreme Court's evolving jurisprudence on military courts reflects this constitutional tension. The October 2023 judgment emphasized constitutional supremacy and held that military trials of civilians undermine Article 10A by denying core fair trial guarantees (Munir, 2019; Jamali et al., 2024). Conversely, the May 2025 decision reinstated military court jurisdiction subject to procedural safeguards, signaling

judicial deference to national security considerations. This doctrinal oscillation highlights a deeper structural conflict between security imperatives and the protection of fundamental rights (Malik, 2024).

This paper argues that despite judicial attempts to conditionally legitimize military courts, their institutional design renders them inherently incompatible with constitutional fair trial guarantees and Pakistan's international human rights obligations under the ICCPR (UN Human Rights Committee, 2007; Ahmed & Qureshi, 2024).

2. Background and Context

2.1 Historical Development

Military courts were introduced in Pakistan as a response to escalating terrorism, particularly following the Army Public School attack in December 2014. The Twenty-First Constitutional Amendment granted military courts temporary jurisdiction to try civilians accused of terrorism-related offences. Although initially limited in duration, successive legislative extensions and statutory amendments have entrenched military courts within Pakistan's justice system.

The Pakistan Army Act (Amendment) 2015 expanded military court jurisdiction to civilians accused of offences such as attacks on military installations and violations of the Official Secrets Act. Despite being framed as extraordinary measures, military courts have evolved into a parallel justice mechanism, raising serious concerns about the erosion of constitutional protections and the permanence of emergency governance.

2.2 Constitutional Framework

Article 10A of the Constitution of Pakistan guarantees the right to a fair trial and due process, mandating adjudication by a competent, independent, and impartial tribunal. Constitutional scholars emphasize that Article 10A was introduced to harmonize Pakistan's criminal justice system with international fair trial norms, particularly those embodied in ICCPR Article 14 (Khan & Jaffari, 2023). Any departure from ordinary criminal courts must therefore satisfy strict tests of necessity, proportionality, and temporal limitation.

Military courts, however, remain structurally embedded within the executive branch. Judges are serving military officers subject to the command hierarchy, compromising judicial independence and violating the separation of powers implicit in Articles 175 and 203 of the Constitution (Munir, 2019). Ahmed and Qureshi (2024) argue that executive dominance over adjudication fundamentally contradicts constitutionalism and erodes civilian judicial supremacy, transforming exceptional justice into a normalized parallel system.

Furthermore, Article 245 authorizes military assistance to civil authorities only in aid of civil power and does not envisage permanent substitution of civilian courts. The routine trial of civilians by military courts therefore represents a constitutional overreach inconsistent with democratic governance (Jamali et al., 2024).

2.3 International Legal Obligations

Pakistan is a State Party to the International Covenant on Civil and Political Rights and is bound by Article 14, which guarantees the right to a fair and public hearing by an independent and impartial tribunal (UN Human Rights Committee, 2007). The Human Rights Committee has consistently emphasized that military courts must meet the same fair trial standards as civilian courts and that trying civilians before military tribunals should be strictly exceptional.

Recent scholarly analysis underscores Pakistan's persistent non-compliance with these obligations. Malik (2024) notes that secrecy of proceedings, restricted access to legal counsel, limited disclosure of evidence, and constrained appellate review in military courts are fundamentally incompatible with ICCPR standards. Such practices place Pakistan at odds with both treaty obligations and emerging customary international law governing military justice (Amnesty International, 2023).

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3. Fair Trial and Its Standards

The right to a fair trial is a cornerstone of the rule of law and an essential safeguard against arbitrary exercise of state power. International instruments such as the Universal Declaration of Human Rights and the ICCPR affirm that everyone is entitled to a fair and public hearing by an independent and impartial tribunal established by law (UN Human Rights Committee, 2007).

Fair trial guarantees encompass multiple interrelated procedural and substantive rights, including judicial independence, public hearings, presumption of innocence, adequate time and facilities to prepare a defence, access to legal representation, equality of arms, the right to examine witnesses, protection against self-incrimination, trial within a reasonable time, and protection against double jeopardy (Nisar, 2022). The denial or restriction of these guarantees undermines both procedural fairness and substantive justice.

In Pakistan's military courts, these safeguards are routinely compromised. Proceedings are conducted in secrecy, civilian legal counsel is restricted, evidentiary rules are diluted, and meaningful appellate review is absent (Human Rights Watch, 2023). Consequently, military courts fail to satisfy constitutional requirements under Article 10A as well as international standards under ICCPR Article 14 (Ahmed & Qureshi, 2024).

4. Research Questions and Objectives

4.1 Research Questions

- To what extent do military court proceedings align with the constitutional guarantee of fair trial under Article 10A?
- How do Pakistani military courts compare with international fair trial standards under the ICCPR?
- What are the constitutional implications of the Supreme Court's conflicting decisions of October 2023 and May 2025?
- What structural deficiencies prevent military courts from ensuring fair trial guarantees for civilians?
- What reforms are necessary to reconcile military justice with constitutional and international standards?

4.2 Research Objectives

The study aims to provide a comprehensive constitutional and legal analysis of military court jurisdiction over civilians, identify gaps between military procedures and fair trial standards, evaluate the impact of Supreme Court jurisprudence, and propose reforms to ensure compliance with constitutional and international human rights obligations.

5. Methodology

This study adopts a qualitative legal research methodology grounded primarily in doctrinal, comparative, and critical legal analysis. Given the constitutional and normative nature of the research problem, a qualitative approach is most appropriate for examining the legality, legitimacy, and implications of trying civilians in military courts within Pakistan's constitutional framework (Munir, 2019; Jamali et al., 2024).

5.1 Doctrinal Legal Analysis

The core methodological component of this research is doctrinal legal analysis. This involves a systematic examination of primary legal sources, including the Constitution of Pakistan, relevant statutory instruments such as the Pakistan Army Act and its amendments, and authoritative judicial precedents of the Supreme Court of Pakistan. Particular emphasis is placed on interpreting Article 10A (right to fair trial), Article 175 (separation of judiciary), and Article 245 (role of the armed forces), as well as the Supreme Court's decisions delivered in October 2023 and May 2025. Through close textual and contextual analysis, the study assesses whether military court proceedings conform to constitutional requirements of independence, impartiality, and due process (Khan & Jaffari, 2023).

5.2 International Human Rights Law Analysis

In addition to domestic law, the research incorporates an international legal analysis focusing on Pakistan's obligations under the International Covenant on Civil and Political Rights. Article 14 of the ICCPR and the interpretive guidance provided by the UN Human Rights Committee, particularly General Comment No. 32, serve as key benchmarks for evaluating fair trial compliance. Reports and observations issued by international human rights bodies, including Amnesty International and Human Rights Watch, are analyzed to assess the practical implementation of these standards in Pakistan's military justice system (UN Human Rights Committee, 2007; Amnesty International, 2023).

5.3 Comparative Legal Analysis

To contextualize Pakistan's military justice framework, the study employs a comparative legal methodology. Jurisdictions selected for comparison—India, Canada, and South Africa—were chosen due to their democratic constitutional structures, experiences with security challenges, and distinct approaches to military justice. By comparing jurisdictional scope, institutional safeguards for judicial independence, transparency of proceedings, and availability of civilian appellate review, the study identifies best practices and normative benchmarks relevant to Pakistan (Bose & Jalal, 1998; Phillips, 2023).

5.4 Qualitative Empirical Insights

While the study does not rely on quantitative data, it draws on qualitative empirical insights obtained from existing interviews, judicial opinions, and publicly available statements by legal practitioners, judges, and policy experts. These insights are used illustratively to enrich doctrinal findings and to highlight the practical consequences of military court trials for civilian defendants. No primary fieldwork interviews were conducted for this study; rather, secondary empirical material is employed to contextualize legal analysis and avoid speculative conclusions (Jamali et al., 2024).

5.5 Critical Legal Studies Framework

The research is further informed by a Critical Legal Studies (CLS) perspective, which facilitates examination of the power dynamics underlying legislative enactments and judicial reasoning related to military courts. This framework enables the study to interrogate how narratives of national security and state necessity influence constitutional interpretation and justify departures from fundamental rights protections. By applying CLS, the research critically assesses whether judicial deference to military authority undermines constitutional supremacy and civilian control over adjudication (Ahmed & Qureshi, 2024).

5.6 Methodological Limitations

As a qualitative doctrinal study, this research does not measure empirical outcomes such as conviction rates or deterrence effects of military courts. Its primary focus remains normative and constitutional rather than empirical effectiveness. Nevertheless, by triangulating constitutional text, judicial precedent, international

standards, and comparative practice, the methodology provides a robust and credible framework for evaluating the legality and legitimacy of military court trials of civilians.

6. Literature Review

The issue of civilian trials before military courts in Pakistan has generated a substantial body of legal scholarship, judicial commentary, and human rights reporting. Existing literature can broadly be categorized into constitutional analyses, security-oriented justifications, and human rights-based critiques, with the latter increasingly dominating contemporary discourse (Khan & Jaffari, 2023; Jamali et al., 2024).

6.1 Constitutional and Judicial Scholarship

Constitutional scholars have consistently questioned the compatibility of military courts with Pakistan's constitutional framework. Khan and Jaffari (2023) argue that military courts represent a departure from the separation of powers envisaged by the Constitution, particularly undermining Articles 10A and 175. Munir (2019) situates the judiciary's validation of military courts within a broader pattern of judicial restraint in matters perceived as involving national security, contending that such deference weakens constitutional supremacy and civilian judicial authority. This pattern of deference is further explained by Munir, Bakht, and Khan (2020), who demonstrate how authoritarian governance structures and security-driven narratives constrain judicial autonomy in Pakistan, compelling courts to accommodate executive and military preferences at the expense of constitutional rights.

Several scholars further emphasize that the temporary justification initially advanced for military courts has lost its constitutional force over time. Hussain (2018) notes that emergency measures, when repeatedly extended, risk becoming permanent features of governance, thereby eroding the normative distinction between ordinary and exceptional justice. This concern is echoed by Jamali et al. (2024), who argue that the persistence of military courts reflects institutional failure within the civilian criminal justice system rather than constitutional necessity.

6.2 Security-Centric Perspectives

A smaller but notable strand of literature defends military courts on grounds of expediency and counterterrorism effectiveness. Proponents argue that civilian courts lack the capacity, security, and efficiency to handle complex terrorism cases, necessitating extraordinary judicial mechanisms (Hussain, 2018). This security-centric narrative often emphasizes conviction rates and speed of adjudication as indicators of success. However, critics caution that such utilitarian reasoning prioritizes outcomes over process, ignoring the intrinsic value of fair trial rights. As Munir (2019) observes, constitutional democracies are defined not by efficiency alone but by adherence to due process, even under conditions of insecurity. Literature increasingly questions whether empirical evidence actually supports claims of superior effectiveness of military courts.

6.3 Human Rights and International Law Scholarship

Human rights-based critiques form the most robust and consistent body of literature on military courts in Pakistan. Reports by Amnesty International (2023) and Human Rights Watch (2023) document systemic violations, including denial of access to counsel, secret proceedings, coerced confessions, and lack of independent appellate review. These findings align with the UN Human Rights Committee's interpretation of ICCPR Article 14, which discourages civilian trials by military tribunals except in narrowly defined and exceptional circumstances (UN Human Rights Committee, 2007).

Recent academic contributions published on SSRN have further deepened this critique. Ahmed and Qureshi (2024) frame military courts as symptomatic of a broader crisis of constitutionalism, arguing that executive dominance over adjudication undermines democratic accountability. Malik (2024) similarly contends that

Pakistan’s military justice regime places the state in persistent non-compliance with its international treaty obligations, particularly where civilians face severe penalties without meaningful procedural safeguards.

6.4 Comparative and Normative Perspectives

Comparative legal scholarship reinforces the conclusion that Pakistan’s approach is an outlier among constitutional democracies. Bose and Jalal (1998) demonstrate that even in states with histories of military intervention, long-term civilian trials by military courts are constitutionally disfavored. Phillips (2023) and Shaikh (2024) highlight that jurisdictions permitting military justice do so within tightly regulated frameworks emphasizing judicial independence and civilian appellate oversight.

Collectively, the literature reveals a strong normative consensus that military courts are ill-suited to adjudicate civilian criminal liability. While acknowledging security challenges, the dominant scholarly position favors strengthening civilian judicial institutions rather than normalizing exceptional military justice mechanisms. This study builds upon and extends existing scholarship by situating Pakistan’s recent Supreme Court jurisprudence within this broader constitutional and international context.

7. Findings and Analysis

7.1 Systemic Deficiencies

Military courts in Pakistan systematically fail to meet constitutionally and internationally mandated fair trial standards. To present these deficiencies in a structured and comparative manner, Table 1 summarizes the core fair trial requirements, the manner in which military courts fall short, and the corresponding violations of the ICCPR and the Constitution of Pakistan. These deficiencies are not merely procedural irregularities but reflect a deeper structural concentration of executive, prosecutorial, and adjudicatory powers within the military justice framework, thereby undermining the constitutional trichotomy of powers and civilian judicial supremacy (Bakht & Mahmood, 2021).

Table 1: Fair Trial Standards and Compliance in Pakistani Military Courts

Fair Trial Standard	Military Court Compliance Issues	ICCPR Alignment	Constitutional Alignment
Independence	Military judges remain subject to the military command structure, lacking judicial autonomy	Violated	Violated (Articles 10A, 175)
Impartiality	Executive and military control over appointment, posting, and discipline of judges	Violated	Violated (Article 10A)
Public Trial	Proceedings conducted behind closed doors with no public or media access	Violated	Violated (Articles 10A, 19A)
Reasoned Judgment	Judgments often lack detailed written reasoning or legal analysis	Violated	Violated (Article 10A)
Appeal Rights	Appeals restricted to military channels without civilian judicial oversight	Violated	Violated (Article 10A)
Legal Representation	Limited access to civilian counsel; reliance on military-appointed advocates	Compromised	Violated (Article 10A)
Evidence Standards	Relaxed evidentiary rules permit hearsay and coerced confessions	Inferior	Violated (Article 10A)

The table demonstrates that deficiencies within military court proceedings are not isolated or procedural in nature; rather, they reflect structural incompatibilities with fair trial norms. Judicial independence and

impartiality are compromised by the subordination of military judges to executive command, directly contravening Article 10A and Article 175 of the Constitution (Munir, 2019; Ahmed & Qureshi, 2024). Similarly, the absence of public trials and reasoned judgments undermines transparency and accountability, both of which are essential components of due process under domestic and international law (UN Human Rights Committee, 2007; Amnesty International, 2023). Restrictions on legal representation and the lack of independent appellate review further erode equality of arms and deny civilians effective remedies against wrongful convictions (Human Rights Watch, 2023; Malik, 2024). Collectively, these deficiencies confirm that military courts operate as an exceptional justice mechanism incompatible with constitutional supremacy and Pakistan's ICCPR obligations.

7.2 Judicial and Legislative Challenges

The Supreme Court's October 2023 decision reaffirmed constitutional supremacy by declaring military trials of civilians inconsistent with Article 10A (Jamali et al., 2024). However, the May 2025 judgment reinstated military jurisdiction subject to procedural safeguards, reflecting unresolved judicial tension between rights protection and security imperatives (Munir, 2019).

As Malik (2024) observes, conditional validation risks normalizing exceptional justice mechanisms and diluting the enforceability of constitutional rights. Ahmed and Qureshi (2024) caution that such judicial accommodation may entrench executive dominance and weaken democratic accountability. This concern aligns with the findings of Munir, Bakht, and Khan (2020), who argue that judicial responses in Pakistan under conditions of authoritarianism and securitization often prioritize regime stability over constitutional enforcement, thereby institutionalizing exceptional measures such as military courts within the ordinary legal order.

8. Comparative Analysis

A comparative examination of military justice systems in other constitutional democracies demonstrates that national security concerns can be addressed without compromising civilian fair trial rights. Jurisdictions such as India, Canada, and South Africa provide instructive contrasts to Pakistan's approach, particularly in terms of jurisdictional limits, judicial independence, transparency, and appellate oversight (Bose & Jalal, 1998; UN Human Rights Committee, 2007).

8.1 India

In India, the jurisdiction of military courts is strictly limited to members of the armed forces under the Army Act, 1950. Civilians are categorically excluded from court-martial jurisdiction, even in cases involving national security or terrorism-related offences. The Indian Supreme Court has consistently held that trying civilians before military tribunals would violate constitutional guarantees of equality before the law and due process under Articles 14 and 21 of the Indian Constitution (Bose & Jalal, 1998).

Moreover, military court decisions in India are subject to judicial review by civilian High Courts and the Supreme Court through writ jurisdiction. This ensures civilian judicial supremacy and preserves constitutional oversight over military justice. The Indian model illustrates that effective counterterrorism measures can coexist with exclusive civilian adjudication of civilian defendants, thereby preserving public confidence in the justice system (UN Human Rights Committee, 2007).

8.2 Canada

Canada provides a more integrated but constitutionally safeguarded model of military justice. While military courts possess jurisdiction over service members, their institutional design emphasizes judicial independence and civilian oversight. Military judges in Canada enjoy security of tenure, financial independence, and are

insulated from the military chain of command, consistent with constitutional principles articulated by the Supreme Court of Canada (Supreme Court of Canada, 2024).

Importantly, all military court convictions are subject to full appellate review by civilian courts, culminating in the Supreme Court of Canada. This appellate integration ensures that military necessity does not override fundamental rights. As Phillips (2023) notes, Canada's framework demonstrates that military justice can function within a constitutional order without creating parallel systems of unaccountable adjudication.

8.3 South Africa

South Africa's constitutional framework offers one of the strongest safeguards against executive interference in military justice. Following the end of apartheid, South Africa constitutionally entrenched the supremacy of civilian courts and required that all military tribunals comply fully with the Bill of Rights, including fair trial guarantees under Section 35 of the South African Constitution (Bose & Jalal, 1998).

Military judges in South Africa are afforded protections equivalent to civilian judges, and their decisions are subject to review by ordinary courts. Civilian defendants cannot be tried by military courts under any circumstances, reflecting a clear constitutional commitment to civilian judicial supremacy. This model underscores the principle that security challenges do not justify derogation from non-derogable fair trial rights (UN Human Rights Committee, 2007).

8.4 Comparative Lessons for Pakistan

The comparative analysis reveals several critical lessons for Pakistan. First, democratic systems uniformly restrict military court jurisdiction to military personnel, rejecting civilian trials as constitutionally impermissible. Second, where military courts exist, they operate under robust civilian oversight and independent appellate review. Third, judicial independence is institutionally protected through tenure security, financial autonomy, and insulation from executive command.

Pakistan's departure from these comparative norms highlights the exceptional and constitutionally problematic nature of its military court regime. As Ahmed and Qureshi (2024) observe, the normalization of military trials for civilians' places Pakistan outside the mainstream of constitutional democracies and undermines its international human rights credibility. Aligning Pakistan's military justice system with comparative best practices therefore requires restoring civilian judicial supremacy and reaffirming Article 10A as a non-negotiable constitutional guarantee.

9. Proposed Reforms

The persistence of military courts in trying civilians necessitates a comprehensive reform agenda aimed at restoring constitutional supremacy, judicial independence, and compliance with international human rights obligations. Comparative practice, constitutional jurisprudence, and international legal standards collectively demonstrate that piecemeal or procedural safeguards are insufficient to cure the structural deficiencies inherent in military adjudication of civilians (Phillips, 2023; Ahmed & Qureshi, 2024). Accordingly, this section proposes a set of interrelated legislatives, judicial, and institutional reforms.

9.1 Restricting Military Court Jurisdiction to Military Personnel

The most fundamental reform required is the categorical restriction of military court jurisdiction to serving members of the armed forces. Comparative constitutional practice uniformly rejects the trial of civilians by military tribunals, even in contexts of heightened security threats (Bose & Jalal, 1998; UN Human Rights Committee, 2007). Parliament should amend the Pakistan Army Act to expressly exclude civilians from court-martial jurisdiction, except during formally declared states of emergency, subject to strict temporal limits and parliamentary oversight. Such a reform would realign Pakistan's legal framework with Article 10A and restore the primacy of civilian criminal courts (Jamali et al., 2024).

9.2 Strengthening Judicial Independence and Structural Autonomy

Where military courts continue to function for service-related offences, judicial independence must be constitutionally guaranteed. This requires insulating military judges from the chain of command through security of tenure, fixed terms of appointment, and protection from executive interference in promotions and discipline (Phillips, 2023). Without such safeguards, military judges cannot meet the constitutional threshold of independence and impartiality required under Article 10A and Article 175 (Munir, 2019).

9.3 Establishing Independent Civilian Appellate Review

Effective appellate review is an essential component of the right to a fair trial. Current appellate mechanisms within the military justice system lack independence and transparency. A reformed framework should establish an independent appellate tribunal composed of civilian judges, with jurisdiction to review both factual and legal aspects of military court convictions (Shaikh, 2024). Ultimately, final appellate jurisdiction should rest with the Supreme Court of Pakistan, ensuring constitutional oversight and uniformity of legal standards.

9.4 Ensuring Transparency and Public Access to Proceedings

Transparency is indispensable to public confidence in the justice system. Military court proceedings involving civilians should, as a general rule, be open to the public and media, with narrowly tailored exceptions permitted only where disclosure poses a demonstrable national security risk (Amnesty International, 2023). Written judgments containing clear legal reasoning should be published to enable scrutiny and appellate review, consistent with constitutional guarantees under Articles 10A and 19A.

9.5 Guaranteeing Effective Legal Representation and Equality of Arms

Reform efforts must also address restrictions on legal representation. Civilians tried under any exceptional jurisdiction must have unrestricted access to counsel of their choice, adequate time and facilities to prepare a defence, and full disclosure of evidence (Nisar, 2022). The practice of appointing military officers as defence counsel undermines equality of arms and should be discontinued. Legal aid mechanisms should be strengthened to ensure meaningful representation for indigent defendants.

9.6 Legislative and Institutional Reform of Civilian Courts

Finally, meaningful reform must extend beyond military justice to address deficiencies within the civilian criminal justice system. Strengthening investigative capacity, witness protection mechanisms, prosecutorial independence, and judicial security within civilian courts would reduce reliance on extraordinary military measures (Hussain, 2018). As comparative experience demonstrates, durable security is best achieved through resilient civilian institutions rather than parallel systems of exceptional justice (Ahmed & Qureshi, 2024). Collectively, these reforms provide a constitutionally grounded pathway for reconciling national security concerns with Pakistan's obligations under domestic and international law. Without structural reform, the continued use of military courts to try civilians will remain incompatible with the rule of law and democratic governance.

Conclusion

The adjudication of civilians by military courts in Pakistan constitutes one of the most consequential constitutional and human rights dilemmas in the country's legal history. This research has demonstrated that military courts, originally conceived as an exceptional and time-bound response to extraordinary security challenges following the 2014 Army Public School attack, have gradually transformed into a normalized parallel justice mechanism for civilians accused of security-related offences (Hussain, 2018; Khan et al., 2023). Such normalization fundamentally contradicts the constitutional vision of an independent judiciary and

undermines the guarantees of due process and fair trial enshrined in Article 10A of the Constitution of Pakistan (Munir, 2019).

The analysis undertaken in this paper establishes that the deficiencies of military courts are not merely procedural or remediable through incremental safeguards, but are structural in nature. The lack of judicial independence arising from military command influence, the absence of public hearings, restricted access to legal counsel of choice, limited disclosure of evidence, and the absence of meaningful civilian appellate review collectively render military courts incompatible with both constitutional standards and international human rights obligations (Amnesty International, 2023; Human Rights Watch, 2023). These shortcomings violate not only Article 10A but also Articles 175 and 19A of the Constitution, which together affirm judicial autonomy, separation of powers, and transparency as cornerstones of Pakistan's constitutional order (Jamali et al., 2024).

The contradictory jurisprudence of the Supreme Court—particularly the October 2023 judgment declaring civilian military trials unconstitutional and the May 2025 decision restoring such jurisdiction with conditional safeguards—highlights an unresolved constitutional tension between national security imperatives and fundamental rights protection. This oscillation reflects a broader judicial struggle to balance pragmatic security concerns with constitutional supremacy (Munir, 2019). However, as demonstrated through comparative analysis, mature constitutional democracies confronting similar threats have consistently rejected the trial of civilians by military courts, instead reinforcing civilian judicial capacity while preserving military justice strictly for service-related offences (Bose & Jalal, 1998; Phillips, 2023).

Pakistan's obligations under the International Covenant on Civil and Political Rights further strengthen this conclusion. Article 14 of the ICCPR, as interpreted by the UN Human Rights Committee, requires that all persons—regardless of the nature of the alleged offence—be tried by competent, independent, and impartial tribunals established by law (UN Human Rights Committee, 2007). The continued reliance on military courts to prosecute civilians places Pakistan in persistent breach of its international commitments and exposes the State to reputational, diplomatic, and legal consequences at the international level (Amnesty International, 2023).

Crucially, this study does not contest the legitimacy of the State's responsibility to ensure national security or to prosecute acts of terrorism effectively. Rather, it asserts that sustainable security cannot be achieved through exceptional justice mechanisms that erode constitutional safeguards. On the contrary, adherence to fair trial guarantees enhances the legitimacy, credibility, and effectiveness of counterterrorism strategies by fostering public trust and accountability (Shaikh, 2024). The reforms proposed in this paper—particularly restricting military court jurisdiction to military personnel, establishing independent civilian appellate review, guaranteeing transparency, and strengthening the civilian criminal justice system—offer a constitutionally sound and internationally compliant pathway forward.

In conclusion, the continued trial of civilians by military courts represents a constitutional anomaly incompatible with Pakistan's democratic aspirations, rule-of-law commitments, and human rights obligations. Upholding Article 10A is not merely a procedural requirement but a constitutional imperative essential to preserving judicial independence, protecting individual liberties, and ensuring that justice in Pakistan is administered through institutions grounded in legality, transparency, and constitutional supremacy rather than through exceptional and militarized forms of adjudication.

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