
View from the courtroom: Extension to military courts difficult without opposition's support

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Four years have passed since the parliament had approved two Acts to amend the Constitution of Pakistan and the Army Act, 1952, paving the way for setting up military courts for trying suspected militants.

A proposal is now under consideration of the federal cabinet to give a second extension to the military courts set up after the 2014 Peshawar Army Public School carnage. This proposal has triggered a debate about the future of these military courts.

The National Assembly's Standing Committee on Law and Justice was informed on Jan 2 that the ministry of law had received a summary from the ministry of interior for giving extension to the military courts. The ministry of law has referred the summary to the federal cabinet for approval.

For giving extension to these courts the government will require amendments in the Constitution of Pakistan and the Army Act, 1952. In the present circumstances, it is difficult for the government to pass the required amendments without support from the major opposition parties and specially while passing a constitutional amendment which requires two-thirds majority in each of the two Houses of the parliament.

Last time such extension was given to these courts in March 2017 when the parliament had passed the Constitution (Twenty-Third Amendment) Act, 2017, and The Pakistan Army (Amendment) Act, 2017. The President of Pakistan had given assent to the said two laws on March 30, 2017.

As the initial two-year term of the military courts had expired on Jan 6, 2017, therefore, in the said two Acts it was provided that these Acts should be deemed to have taken effect on and from Jan 7, 2017.

The military courts were initially set up under the Constitution (Twenty- First Amendment) Act, 2015, for trying terrorists attached with militant outfits using the name of religion or sect. The said law was enacted on Jan 7, 2015, for a period of two years.

In the light of the said constitutional amendment, the Pakistan Army (Amendment) Act, 2015, was also enacted the same day, which also provided wide-ranging offences in which the military courts were empowered to conduct trials, but it was limited to only those suspected terrorists claiming or were known to belong to any terrorist group or organisation using the name of religion or a sect.

When these courts had completed its first two-year term in Jan 2017, they had convicted 274 militants of which 161 were sentenced to death whereas 113 others were awarded prison terms mostly life imprisonment.

The data recently shared by ISPR, the media wing of Pakistan Army, showed that in its four-year duration these courts had convicted 617 militants of which 346 were awarded death sentences whereas 271 others were sentenced to different prison terms. A total of 56 condemned prisoners have so far been executed.

The first extension was given during the previous federal government of Pakistan Muslim League-Nawaz, and it was easy to convince other parties to support the bills in the parliament for amending the Constitution and the Army Act due to occurrence of some deadly incidents of terrorism. This time convincing opposition political parties is a much difficult task keeping in view the improved security situation in the country.

Another major development which has taken place last year is an important judgment delivered by the Peshawar High Court on Oct 18 through which convictions of detainees in 75 of writ petitions were set aside and the convicts were acquitted. The federal government has challenged the judgment before the Supreme Court, which initially suspended the PHC's order.

In the detailed judgment authored by PHC's Chief Justice Waqar Ahmad Seth several of the flaws in the military courts judgments were highlighted, which showed that the convicts were not given fair trial.

The undeniable fact about these military courts is that the entire proceedings starting from indictment of a prisoner to their conviction shrouds in secrecy. Even the close family members of

the convicts were not aware of these trials and they mostly came to know about the conviction through the ISPR statements.

Last time, when amendments were made in the Army Act certain provisions were included in it, which were not available in the amendments made in 2015. The then government had claimed that those new provisions would help in introducing transparency in the functioning of the military courts and the under-trial prisoners would receive a fair trial.

Before the 2017 amendments relatives mostly complained that their convicted relatives were “missing persons” who had remained in detention for many years before their convictions. They had complained that their respective convicted relative was not given opportunity to hire a counsel of his choice.

On the recommendation of Pakistan Peoples Party certain changes were made to the Bill introduced in 2017. One major facility provided to the suspects was to engage a counsel of his choice. Section 2 (iv) (e) of the amended Army Act states: “the accused shall have the right to engage a counsel of his choice at his trial as provided for in this Act. In case the counsel is unable to engage a counsel due to any reason, the convening authority at its discretion, may provide a counsel, in request of the accused, at state expenses.”

While the government claimed that the convicts were asked about hiring a counsel of their choice, they had mostly declined, but the judgment of the PHC proved that the said provision had not been followed and a junior lawyer was engaged from Punjab to defend most of the convicts.

“After the provisions of private defence counsels and that too on state expense the respondents/prosecution did engage private counsel belonging to the province of Punjab and that his standing at the bar seems to be, not more than 5/6 years. How, he represented the accused/ convicts and in which language and at which place he use to consult them is a mystery,” the PHC bench has ruled in its 173-page verdict.

The bench ruled: “Before this court in all the writ petitions, the relatives have engaged costly and senior counsel which reflects that during trial the same facility was not made available to the accused/ convicts.”

“The so-called private counsel at state expenses was just a dummy, to fill in the blanks to this respect as is done in all other proceedings,” the high court ruled.

Another important amendment was related to the applicability of Qanun-i-Shahadat Order, 1984 (Evidence Act) to the trials by the military courts, following which it was mandatory on trial court to strictly follow the conditions applicable to witnesses in a criminal trial. Moreover, another inclusion

was that of sub-clause (d) of sub-section (iv) in section 2 of the army Act which provides that the accused will be provided grounds of arrest within 24 hours of arrest.

A legal expert, who represented several of the convicts of military courts before the high court, said that it was unfortunate that the safeguards introduced through the 2017 amendments for ensuring a fair trial of an accused had not been followed by the military courts. He said that in case the parliament decided to give extension to these courts, it should ensure provision of fair trial to an accused.

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