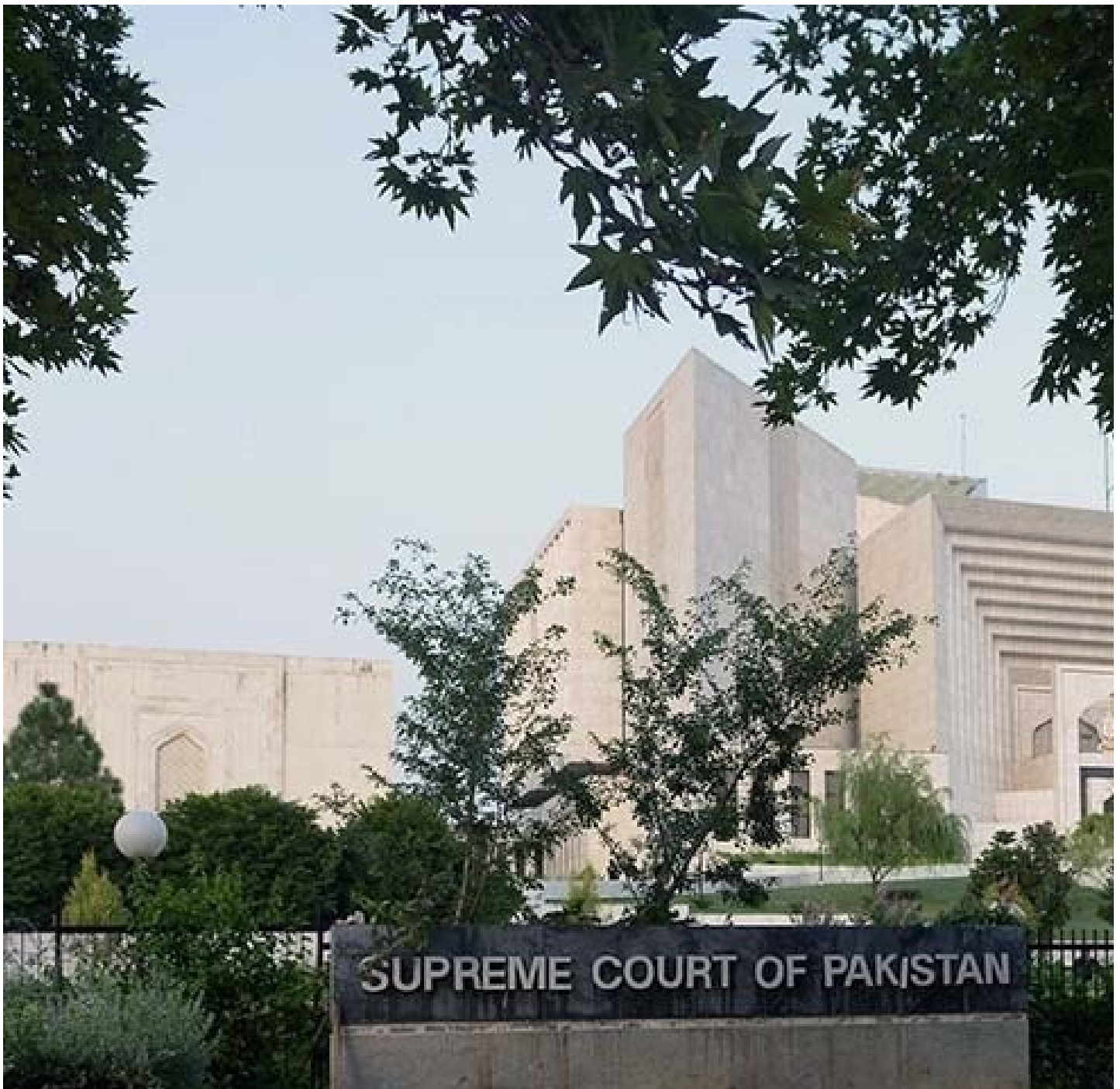


---

# SC rejects govt plea to stay PHC hearing against military court verdicts

---

Nasir Iqbal | Updated 10 Mar 2020



The Supreme Court turned down a request by the federal government on Monday to restrain the Peshawar High Court (PHC) from

**ISLAMABAD: The Supreme Court turned down a request by the federal government on Monday to restrain the Peshawar High Court (PHC) from hearing appeals against convictions awarded by military courts.**

“Their judgement will help us,” observed Justice Mushir Alam while ignoring the request made by Additional Attorney General Sajid Ilyas Bhatti, who represented the federal government.

Justice Alam was heading a three-judge bench which had taken up over 70 appeals moved by the defence ministry against the November 2018 PHC judgement. The High Court, through its verdict,

had ruled that the convictions by military courts on charges of terrorism were wrongful and were based on ill-will.

Earlier, the apex court had stayed the PHC order with a directive to the jail superintendent concerned to halt the release of the accused who have received different sentences, including death, in a number of cases.

Presided over by Chief Justice Waqar Seth, the PHC is expected to commence in-camera hearing of over 200 appeals on Tuesday.

At the fag end of Monday's proceedings before the apex court, the Additional Attorney General (AAG) made a request to restrain the PHC from taking up and, pronouncing its verdict, on appeals against convictions awarded by military courts until a decision on the government's appeal by the Supreme Court.

But Justice Alam observed that the bench would not stop the High Court from giving a judgement since it could help the apex court.

The AAG argued before the Supreme Court that the PHC, while deciding the appeals against the military court convictions, had not followed the guidelines given by the SC.

Sajid Ilyas Bhatti, the AAG, contended the High Court had decided 71 cases through one judgement even though different convictions were awarded against different terror-related charges to a number of accused right from 2004 to 2015.

He recalled that during trials by the military courts, five per cent of people facing allegations of terrorism were acquitted of all charges. When the court sought evidence other than confessional statements on the basis of which convictions were awarded, the AAG replied that the Field General Court Martial (FGCM) delivers his verdicts "instantly" in case of confession by an accused, but if an individual refuses to confess, a trial begins.

Advocate Laiq Khan Swati, who represented Akhtar Ali and Jamshed Khan, put a question before the Supreme Court whether the forceful removal of a citizen by unknown security agencies and subsequent alleged wrongful confinement at an unknown place without lawful authority was justified under the Pakistan Army Act (PAA) and the Constitution.

Jamshed Khan was the brother of Baz Mohammad, who was allegedly abducted by an intelligence agency on May 8, 2012, from a katchi abadi in Islamabad's Sector I-11/4 and later awarded the death sentence by a military court.

The petitioner said the military authorities had refused to give him a copy of the trial proceedings.

Mr Swati, the counsel for Akhtar Ali and Jamshed Khan, recalled that the Federal Shariat Court had already held in one of its judgements that a copy of the trial proceedings should be given to an accused before hearing begins on his appeal.

Advocate Naveed Akhtar, who represented Abdul Rashid, questioned whether the federal government was justified in referring the case of his client to a military court instead of a civil court without giving any reason.

Mr Akhtar said his client was arrested from Karachi in 2014, but charged with committing offences in 2008-09. The authorities concerned did not assign any reason for keeping him in “illegal custody” for two years before shifting him to an internment centre under the Actions in Aid of Civil Power Regulations 2011.

He also recalled that a 17-judge full court of the Supreme Court had dismissed petitions challenging the 21st Amendment and reaffirmed that any order passed, decision taken or sentence awarded by military courts was subject to judicial review by high courts and the Supreme Court on grounds of being coram-non-judice, without jurisdiction or suffering from mala fide, including malice in law.

The apex court had also held that the decision to select, refer or transfer the case of an accused for trial under the Pakistan Army Act was subject to judicial review, he added.

*Published in Dawn, March 10th, 2020*