



**RESEARCH PAPER**

**Countering Terrorism: Constitutional and Legal Framework  
(A Critical Appraisal of Judicial Strategies of Pakistan)**

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**ABSTRACT**

Pakistan is immensely affected country of terrorism after 9/11. To curb this menace, legislative measures were adopted. However, after the Peshawar Army Public School attack in 2015, the Parliament amended the Constitution through 21<sup>st</sup> constitutional amendment and authorised the Military Courts to try the alleged civilian terrorists. But, it is alleged by international human rights activists that empowering the Military Courts in Pakistan amounted to a violation of international human rights obligations. It is also contended that Pakistan has ratified ICCPR and Article 14 of the Covenant guarantees fair trial of every person by a competent, independent and impartial court or tribunal and trial of civilians by Military Courts is a violation of such right. It is grund norm of the criminal justice system that the legal protection and procedural safeguards of every person must be defended even in the midst of the war against terrorism. This research critically analyses the scope of Military Courts over alleged civilian terrorists in the purview of constitutional judicial structure of Pakistan in connection with international human rights regime.

**Introduction**

Terrorism has affected almost every country in the world, and the human costs of terrorism have also been felt in every corner of the globe (Office of the UNHCR, 2020). In the last decade alone, terrorists killed more than 21000 people around the world. Generally, terrorism contributes in 0.01% of global death, however, it depends on the region and time period. In the regions facing conflict, this ratio is much higher. In 2017, this ratio escalated to 0.05% of the total deaths around the world (Ritchie, et al. 2013). The states suffering the terrorism, therefore, adopted various methods including legislative and judicial measures to counter-

terrorism. Pakistan has also been facing terrorism and insurgency since its early history, and has suffered a massive massacre of human resources both of military-men and civilian along with the substantial economic wreckage. Government has dealt with such situations by taking constitutional and other legal measures. Different judicial measures like establishment of Special Courts have had been taken in the past. However, the establishment of Military Courts particularly after a severe wave of terrorism from last two decades is one of the important measures taken by the government of Pakistan.

Military courts were first time established in 1953 to deal with the riots against Qadianis. Again in 1958, Military Courts were established by the then government, and the primary purpose was to suppress the anti-government communal factions particularly the progressives, leftists and nationalists. In 1969, once again the then undemocratic government following its predecessor's line of action established Military Courts where thousands of people were awarded sentences by these courts. Finally, these courts were abolished on the orders of Justice Hamood-ur-Rehman, the then Chief Justice of Pakistan. In 1979, Military Courts were again set up throughout the country with the basic objective of suppressing the genuine democratic demand for restoration of fundamental rights and constitution (Khalti, 2015).

Recently, Military Courts have been again established in Pakistan in 2015 through the Constitution (Twenty-First Amendment) Act, 2015, following a massacre of 140 innocent human lives in Army Public School Peshawar incident where mostly children were killed. The measure though seems desirable to speed up the trial of suspected terrorists, but on the other hand, violates basic fundamental human rights guarantees (Ghori, 2018). In response to combat the terrorism sternly, these courts were established as part of the National Action Plan. These courts were empowered to prosecute the culprits for certain terrorism-related offences for a period of two years (21<sup>st</sup> Constitutional Amendment). Such courts came to an end in early January, 2017. However, on March 31, 2017, the tenure of Military Courts was further extended for another period of two years upto the January 6, 2019 (Constitution (Twenty-Third Amendment) Act, 2017). The same constitutional amendment conferred the jurisdiction on the Military Courts for conducting the trial of the culprits engaged in specified terrorist activities and disparaging the socio-economic peace and progress of the country.

During the initial period of two years, approximately 270 cases were tried by the Military Courts with 90 percent conviction rate. The majority of the alleged offenders have been sentenced to death, and some were awarded imprisonment. However, some have been acquitted as well. Due to the high conviction rate, as compared with the ordinary courts, human rights activists and organizations have levelled the allegations of transparency particularly in procedural matters as attended by these courts (Chandran, 2017). At the end of their four years, according to the International Commission of Jurists, these courts were assigned total 717 cases,

out of which 646 have been decided, and the fate of the remaining 70 is still pending (International Commission of Jurists, 2012).

In every state, including Pakistan, where Military Courts have been established, two types of laws exist. One is the military law and the other one is civil law. Ordinarily, Military Courts deal with military law and ordinary courts with civil law or law of civilians (Butt & Yaseen, 2017). But at times, Military Courts are empowered to deal with civil law or law of civilians for non-reliance on ordinary courts.

No doubt Pakistan has suffered a lot in term of socio-economic and human loss resulting from the terrorism, and of course, military courts were established as last option in addition to the other courts having the jurisdiction for countering the terrorism. However, the judicial functioning of these courts is suffering the criticism which needs to be focused for countering the terrorism properly either from the forum of Military Courts or from any other alternative judicial setup. Thus, the research study undertaken is intended to identify the problem/s making the working of these courts controversial.

### **Research Question**

This study intends to explore the answer of the query, *“Whether for countering the terrorism, establishing the Military Courts proved to be within the constitutional and legal framework? If no, then what may be the alternative constitutional judicial setup to cope with the terrorism-bug?”* The exploring of such question is with a view to bring the matters concerning the counter-terrorism judicial strategy within the constitutional and legal frame work. While exploring this research question, the bench mark for the evaluation will be the constitutional and International law mandate shaping the parameters of the justice system of Pakistan.

However, such investigation is intended exclusively in academic and research viewpoint, and thus will be deliberated and discussed in due regard of all concerned institutions, i.e., Parliament, Executive (both civil and military) and Judiciary whose insight particularly for peace, security and justice, is always appreciable with great respect.

### **Constitutional Mandate for Justice and Counter-Terrorism Strategy**

Since the early history of Pakistan, it has been the constitutional mandate that *“... the people of Pakistan may prosper and attain their rightful and honoured place amongst the nations of the World and make their full contribution towards international peace and progress and happiness of humanity”*( Objective Resolution, 1949; Constitutions, 1956, 1962 and 1973, Preamble, Para-12,). This mandate indeed was decided to make the Pakistan *“an egalitarian society”* enjoying peace, security and justice (Objective Resolution, 1949; Constitutions, 1956, 1962 and 1973, Preamble, Par-12). This mandate may conceivably be achieved particularly through guaranteeing the civil

liberties and establishing the justice system featured with competent, impartial and independent judiciary. Both of these factors may ultimately contribute for the development of Rule of Law-based society free of terrorism and other social-economic disparities.

For this purpose, the Constitution, 1973 has expressly provided that “*independence of judiciary shall be fully secured*” and for this purpose constitution has committed for a judicial system consisting on Superior and Subordinate judiciary including some Administrative and Special Courts and Tribunals (Constitution, 1973, Articles 175-212-B). The Superior Courts including Supreme Court, High Courts and Federal Shariat Court are constitutionally obligated to protect the constitution and fundamental rights. These rights have been provided and guaranteed in the constitution (Constitution 1973, Preamble, Para-8; Articles 8-28).

Among these rights, security of person including right to life and liberty, safeguard against arrest and detention, fair trial and equality of citizens, are of crucial nature particularly in the context of trial of cases of terrorism at any judicial forum. Since, the protection of these rights for all citizens including the accused person is the constitutional mandate which must be followed while dispensing the justice either in ordinary offences or accusation of terrorism trailed by the ordinary courts or special courts. This is indeed the demand of Rule of Law one of the basic features of the constitutional system including the Judicial set up of Pakistan. Since, the counter-terrorism strategy for dealing the terrorist accusations however, should be within the constitutional parameters as underlined above concisely.

### **International Law Standards and Counter-Terrorism Strategy**

The justice system is, indeed, established for the protection of human rights. The issue of the protection of these rights is not the state-specific. Rather it has become the concern of the international community as a whole. So, in addition to the state-laws regarding the enforcement of human rights, the international community has also established certain principles agreed by the states to observe these values while dispensing the justice in their own indigenous judicial system.

In this regard, different conventions have been adopted and signed by the sovereign states including Pakistan. These standards set the guidelines for the member-states to maintain Rule of Law based justice system both in civil or criminal matters, and the same is true for the trial of cases of terrorism which has become the global dilemma. The International Law therefore has provided certain standards for conducting the trial of the offences concerning the terrorism. Among others it has asserted that every person charged with a criminal offence has a right to be tried by a competent, independent and impartial judiciary (International Covenant on Civil and Political Rights, 1966, Article 14).

In this regard, the International Covenant on Civil and Political Rights, (ICCPR) 1966, UN Special Rapporteur, Amnesty International and International

Humanitarian Law are notable standards. These instruments provide the guidelines for the protection of human rights particularly while national judicial authorities are dispensing the justice for their citizens facing the accusations of offences. These instruments affirm that the judges must be independent, and the opportunity of engaging lawyers of their own choice should be given to the accused persons otherwise the Rule of Law is missing. These International law standards further bind the states' judicial forums to conduct the fair trial in open court, and charges against the accused, nature of offences, proceedings of trials and reasons in the judgments should be made public. It further requires for the sake of protection of human rights that punishments should not be inhumane and right of pardon and access to the courts should not be barred (ICCPR, 1966, Articles 6, 7, 9 and 14; UN Special Rapporteur, Amnesty International 2017).

### **Judicial Strategies for Countering-Terrorism: A Critical Appraisal**

On the touchstone of above Constitutional and International Law Standards, judicial strategies established both in past and present as well for countering the terrorism are evaluated. This evaluation well enables us to make effective judicial strategy for proper eradication of terrorist activities which has become the menace for the socio-economic development in Pakistan. Our study finds three types of judicial forums used and experienced for countering the terrorism in Pakistan, i.e., Anti-Terrorism Courts, Military Courts and Model Courts. The substantive and procedural legal aspects of these forums are discussed in comparative viewpoint to point out the problems affecting the dispensation of justice. This study is with a view to make the choice of judicial forum better one for the larger interest of the integrity, security and defence of Pakistan.

#### **Military Courts**

The Military Courts are established to bring and try military charges on military and non-military personnel during wartime including spies, traitors and enemy combatants. Historically, Military Courts were first introduced in Europe in 1960s. Many countries, including U.S.A, U.K, Israel, France, Germany, Russia and China have established military courts within their jurisdictions (Butt & Yaseen, 2017). After World War II, military tribunals were set up at the international level to try war crimes and crimes against humanity (Amnesty International, 2017). Constitutions of different states not only provide rather protect the establishment of military courts.

Pakistan has also gone through the experience of establishing the Military Courts as the terrorism has been the regular phenomenon in Pakistan. It is affecting badly the socio-economic development of the country. For conducting the trial of terrorists, Military Courts have been established and working since early history of Pakistan. For this purpose amendments have been inserted both in constitutional and ordinary laws (Constitution 1973, Article 212-A; Constitutional Amendments, 21

and 23; Pakistan Army Act, 1952). Through these laws, Military Courts have been established basically as a counter-terrorism strategy by civil-military quarters.

In a situation where terrorism prevails and insurgency erupts, determining the proper military authority becomes difficult because sometimes civil liberties are to be compromised in the name of counter-terrorism move. In such like situation, military jurisdiction can be analysed keeping in view three major criterions. These include martial law, military justice and the law of war which are discussed under these lines briefly.

During martial law, civilians can be put on trial by military authorities when civil courts become unable to carry on their functions. However, this kind of jurisdiction cannot be exercised in ordinary circumstances. USA Supreme Court in this regard held that military authorities cannot exercise such jurisdiction if the jurisdiction of ordinary civil courts can be invoked by the public (*Dnc v Kahanamoka*). Secondly, certain civilians can be subjected to military jurisdiction in case of commission of specified offences which include espionage and acts against the state.

Thirdly, in accordance with the Law of War or International Humanitarian law, the trial of civilians by the military is possible. For instance, in a case, U.S.A Supreme Court held the trial of civilians charged with espionage to be legal even during a period when civil courts were functional. This was so because Congress had previously granted jurisdiction to military courts “to define and punish Piracies and Felonies committed on the high Seas, and offenses against the Law of Nations” (Sultan, 2015).

However, it is pertinent to mention that civilians can be tried by military courts only in exceptional circumstances. The foremost condition for the trial of civilians by a military court is that the war must be declared and trial must be conducted in accordance with international obligations of the states and domestic law (Sultan, 2015).

Those who supported military justice, are of the firm view that military jurisdiction is not unlimited and unconditional. Rather in order to exercise such jurisdiction, certain conditions must exist. Apart from adherence to general principles of natural justice and rule of law, military courts must possess jurisdiction vested by the competent authority. Secondly, these should not act as a compulsion rather must understand that their basic function is to uphold discipline. Thirdly, these courts must act in a fair and transparent manner. Fourthly and finally, functions of these courts must yield with the basic principles of judicial system and obligations under International Law and the Constitution concerned (Sultan, 2015).

The composition and functioning, and even then the existence of the Military courts established in Pakistan, have been suffering criticism from different corners. It is alleged that various fundamental rights, particularly the right to due process,

right of fair trial and right of equality have not been protected in the proceedings before these courts. In such a situation, judicial strategies prove useless for countering the terrorism (Butt & Yaseen, 2017).

Another objection raised is that two parallel judicial systems cannot work in a country. Pakistan is already facing a number of problems in this regard. Federal Shariat Court, Shariah Courts and *Jirga* Courts have been constituted in the presence of Superior and District Courts. This situation is responsible for certain problems effecting justice system. So, the establishment of Military Courts, apparently, seems beyond the constitutional legal parameters for the judicial system of the country (Butt & Yaseen, 2017).

The Actions (in Aid of Civil Power) Regulation 2011 deals with the detention of the accused. So, it is also alleged to be in contravention of Article 9 of ICCPR, 1966 and Article 10 (4) of the Constitution 1973 of Pakistan which provides that no such detainee can be detained over three months unless such detainee is heard in person by a review board. In absence of such hearing, possibility of ill-treatment cannot be ruled out. As a result, the provisions of the said regulation go in contravention of right to life and liberty both under the mandate of Constitutional 1973 and international law standards.

Again, it is argued that establishing Military Courts might result in speedy trials but it is not the proper way in terms of 'justice hurried is justice buried'. Rather permanent judicial reforms are needed for countering the terrorism. Instead of addressing the real issues of the judicial system, relying on Military Courts as a short term goal would not benefit, and rather would create more serious repercussions for working of the ordinary judicial system. For snubbing the terrorism, need is to contemplate the gross root problems in judicial setup, instead of taking extra-constitutional steps of establishing new courts.

Furthermore, regarding Military Courts the main concern is the non availability of fundamental rights as guaranteed in the Constitution, 1973. On the basis of these concerns, the establishment of military courts was already struck down in a case titled *Liaquat Hussain vs. the federation of Pakistan (Liaquat v. Federation, 1999)*. Likewise on the similar ground of denial of the right to fair trial Peshawar High Court set aside the sentences of certain accused convicted by military courts (Sultan, 2015).

However, contrary to above, some accused approached the Supreme Court of Pakistan with the same allegations but the Supreme Court ruled that Military Courts had jurisdiction to try them, and there is no question of *malafide* and bad faith and no apparent illegality was committed by military courts and consequently, all petitions were dismissed (Sultan, 2015).

On the other hand, some legal experts argue that Military Courts have their own importance. According to them at times ordinary courts do not remain suitable

for dispensing justice, and hence, Military Courts are established. They claim that the different countries have managed difficult situations with the help of Military Courts at the times when ordinary courts could not prove purposeful (Butt & Yaseen, 2017).

Soofi, a profound expert of International Law refers to the observation of the Supreme Court which has called the establishment of military courts "*necessary and appropriate response to defend Pakistan from internal threats of war from non-state actors*" (Soofi, 2016). So, Soofi argues that the atrocities of non-state actors through triggers the application of the law of war, there is no need for a formal declaration of war but justifies the establishment of Military Courts on the basis of prevailing circumstances (Soofi, 2016). However, he is of view that "*Trials of civilians by military or special courts should be exceptional, i.e. limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where with regard to the specific class of individuals and offences at issue, the regular civilian courts are unable to undertake the trials*". In this context he justifies the establishment of Military Courts on the point that "*in such state of war, Pakistan currently finds itself in an exceptional circumstance and the failure of the ATCs in effectively countering terrorism, allows Pakistan to resort to military court trials*" (Soofi, 2016).

This is argued that failure of the government to provide speedy justice by ordinary courts including ATCs renders the entire criminal justice system inefficient. Such situation binds the government to go for alternative forum for having the justice speedy and effective. So, the establishment of Military Courts is supported on the ground that these courts providing justice expeditiously which may be help full in avoiding terrorist activities.

Though, many arguments can be advanced for the establishment of Military Courts on the basis of necessity, there is no room in today's International Law regime for the establishment of a parallel judicial system which does not fulfil the ingredients of competency, impartiality and independence. The International Law Standards assert that every person charged with a criminal offence has a right to be tried by a competent, independent and impartial judiciary. In this regard, The UN Special Rapporteur on the independence of judges and lawyers, 2016 has stated that "*using military or emergency courts to try civilians in the name of national security, a state of emergency or counter-terrorism... runs counter to all international and regional standards and established case law.*"

It is also alleged that most of the trials by Military Courts are conducted secretly and criminal charges, trials and the judgments are not made publically. Moreover, accused are not given a chance to engage counsels of their own choice and most of the cases are decided on the basis of confessional statements. Such type of proceedings falls in contravention of human rights as recognised by international conventions. (ICCPR, Articles 6, 7, 14) which also contradicts UN Basic Principles on the Independence of Judiciary (Amnesty International, 2017).



In 2017, the UN Human Rights Committee (HRC), in its first review of Pakistan's implementation of the ICCPR, 1966, expressed concerns over extension of the jurisdiction of military courts on civilians. The Committee recommended that Pakistan should make "*the legislation relating to the military courts with a view to abrogating their jurisdiction over civilians...*" and "*reform the military courts to bring their proceedings into full conformity with articles 14 and 15 of the Covenant in order to ensure a fair trial*" (International Commission of Jurists, 2019).

Apart from these general principles, General Comment No. 32 of HRC also states that, "*While the Covenant does not prohibit the trial of civilians in military or special courts, it requires that such trials are in full conformity with the requirements of article 14 and that its guarantees cannot be limited or modified because of the military or special character of the court concerned*" (Office, 2020).

International law in this regard says that jurisdiction of Military Courts should be restricted to military offences against military personnel only. According to international law standards, the trial of common people by military courts is the infringement of human rights. Pakistan is a party to all major human rights instruments including ICCPR and thus, Pakistan is under obligation to observe all human rights law standards. Article 14 of ICCPR states that "*everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.*" HRC states that the right to fair trial as enunciated in Article 14 *supra* applies to all courts and tribunals whether general or special, civilian or military.

Furthermore, Draft Principles Governing the Administration of Justice Through Military Tribunals, adopted by the former UN Sub-Commission, on the Promotion and Protection of Human Rights in 2006 states that military courts should be restricted to military personnel in relation to military offences. They provide that criminal offences of any nature of civilians shall be tried by civilian courts. Apart from that Principle 29 of the UN Updated Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity states that "*the jurisdiction of military tribunals must be restricted solely to specifically military offenses committed by military personnel.*"

Various human rights courts have also adopted the same approach. For instance, the Inter-American Court of Human Rights has held that where "*a military court takes jurisdiction over a matter that regular courts should hear, the individual's right to a hearing by a competent, independent and impartial tribunal previously established by law and, a fortiori, his right to due process are violated.*" In *Law Office of Ghazi Suleiman v. Sudan*, the African Commission of Human Rights in 2003 stated that "*civilians appearing before and being tried by a military court presided over by active military officers who are still under military regulations violates the fundamental principles of a fair trial*". The European Court of Human Rights though did not prohibit the trial of civilians before military courts but requires that standards of the right to a fair trial should be adhered to (International Commission of Jurists, 2019).

On the touchstone of above, it is concluded that that military courts established through 21<sup>st</sup> Constitutional Amendment fall short of national and international law standards particularly on the issue of the right to a fair trial. Furthermore, these courts are not satisfying the criterion of judicial independence. Hence, these courts cannot be an effect strategy for countering the terrorism which may possibly be reduced not only by simple disposal of cases but by delivering the justice in true sense of Rule of Law. Such pattern of justice ultimately will bring the confidence in the people including the accused persons, and making them submissive to the law of the land which is the sole guarantee for terrorism free society.

### **Anti-Terrorism Courts**

As an alternative to military courts, another approach was adopted in the shape of the Anti-Terrorism Act 1997 (ATA). Though the ATA is applicable in the entire country, Anti-terrorism Courts (ATCs) have not been established in FATA due to law and order situation in the region. The law though has no longer history but has been amended seventeen times till 2015 to make it suitable as according to reports, it was not giving the required results. Supreme Court of Pakistan has also shown concerns over the definition of terrorism, the appointment of judges of ATCs and their approach towards trial in these courts.

Thus, other laws have also been enacted to supplement the ATA which include the Investigation of Fair Trial Act 2013 and Protection of Pakistan Act 2014 (POPA). The latter is the most relevant in this regard as it has been enacted on the same scheme for which ATA was enacted and to deal with the terrorist threats not covered by the ATA (Parvez et al, 2019). The Act was though a temporary measure and time-limited but provided that all scheduled offences shall be cognizable and non-bailable (Protection of Pakistan Act 2014, Section, 5). The Government may authorize the detention of any person for a period of ninety days who acts prejudicially against the integrity, security or defence of Pakistan and such detention shall be considered in accordance with Article 10 of the Constitution of Pakistan (Protection of Pakistan Act 2014, Section, 6). An accused facing the trial on existence of reasonable evidence against him, shall be presumed to be involved in waging war against Pakistan unless he establishes his non-involvement in the offence (Protection of Pakistan Act 2014, Section 15) and the provisions of Sections 374, 426, 435, 439, 439-A, 491, 496, 497, 498 and 561-A Cr. P.C. shall not be applicable (Protection of Pakistan Act 2014, Section 18).

Analysis of the above-mentioned provisions of POPA reveal that apart from enforcing strict scheme of criminal justice system on the accused of scheduled offences, the scheme of universally accepted principle of criminal justice system that an accused is deemed to be innocent unless proved guilty was changed by section 15 of the Act and all the provisions giving any kind of benefit to the accused have been excluded from application under section 18.

On the other hand, it is also argued by many that despite their bitter experiences, military courts are the necessity of time. People have supported military courts who themselves remained their victims. In 1970, a young boy was awarded a sentence of six years rigorous imprisonment by a military court, during his confinement in Adyala Jail Rawalpindi. His sin was that he made a speech against then Martial Law Administrator. In 2015, the same boy was the Federal Minister of Pakistan when he presented a bill for the constitutional amendment in the Parliament. The supporters for establishing military courts say at that time military courts were established to suppress political rivals, whereas now they are established to curb the menace of terrorism. It is further stated by them that lacunas in the criminal justice system, reluctance of lawyers and witnesses to appear in ATCs against terrorists and threats to judges are the main reasons that trial of terrorists cannot be conducted in ordinary courts (Khalti, 2015).

### **Model Courts**

Another judicial response for speedy justice has been recently seen in the shape of Model Courts. These courts started their functions on 1<sup>st</sup> April 2019 (Hasnaat , 2019). While addressing to the award distribution ceremony of Model Court judges, the then Chief Justice of Pakistan said that “*Model courts materialised the vision for expeditious and inexpensive justice, which otherwise was just a dream before the establishment of Model Criminal Trial Courts in the country*” (Correspondent , 2019).

During the first 88 days of these courts, it was brought on the record by the Director General of Model Courts that a total of 19316 cases were decided by Model Civil Courts, 18908 cases were decided by Model Trial Magistrate Courts, and apart from that, statements of 39906 witnesses were recorded as well (Correspondent , 2019). In the year 2019, it was reported that total 465 Model Courts were set up in the entire country in order to clear the huge backlog of cases. These courts decided a total number of 30049 cases, which included 10121 murder and 19928 narcotics cases (APP, 2020).

Although, a huge number of cases have been disposed of by these courts, but there is also a severe criticism on the ratio of acquittal before these courts. After their inauguration on 1<sup>st</sup> April 2019, and as on 28 May 2019, a total 4000 people were acquitted by these courts. Though, several legal experts have extended this blame on the Police and Prosecution Departments on account of defective evidence, but another segment also says that these courts are suffering the reality that justice hurried justice buried (Hasnaat, 2019).

In addition, working environment, procedure and pace of these Model Courts can be criticised, but one thing is clear that nobody can challenge the constitutionality of these courts because these have been established under the same law and the same procedure is being followed. Moreover, nobody can challenge the legality of these courts on account of being against the human rights of the accused. Small issues like acquittal rate and benefit of the doubt being given to the accused

can be looked into, but these principles are universal in nature and cannot be denied by these courts either. Even if terrorism-related cases are required to be decided expeditiously, such like Model Courts may be experimented, for which at least we would not have to face criticism on account of being against the human rights.

## **Conclusion and Suggestions**

Though the Military Courts were established through 21<sup>st</sup> Constitutional Amendment, 2015, these are not bearing a new concept and strategy for countering the terrorism. Rather Pakistan has experimented Military Courts many times, and even at times, these were declared unconstitutional by Superior Courts. Lastly established have, though, been given the legal cover through the famous verdict of the Supreme Court on 18<sup>th</sup> and 21<sup>st</sup> Constitutional Amendment, these courts have not been immune from criticism. Rather they faced domestic and international criticism by individuals, organizations and particularly human rights bodies. The primary allegation has been levelled that these courts are not in consonance with the provisions of Article 14 of ICCPR, 1966 and thus are not in compliance of the international standards for the establishment of courts and tribunals.

However, on other side it is argued rightly that due to the huge backlog and security issues of ordinary courts, terrorists are not convicted, and they often go escort free, and eventually become a persistent threat for security and peace. However, in 2019, a new experiment of Model Courts was conducted which are still functional, and seems more effective than the first two judicial strategies. These courts are presided by ordinary judges and act under the same laws but were assigned special tasks. The results produced after a couple of months are remarkable. Though several issues need to be fixed, but experiment of these Model courts has proved that for terrorism-related cases, such like specialized courts may be created to try accused of terrorism and related offences, for which Military Courts are time again created, and cases of those accused can be decided expeditiously without any disapproval and criticism from international community.

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