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ADMISSIBILITY OF MILITARY COURTS IN PAKISTAN:

REFLECTIONS FROM THE DOMESTIC AND INTERNATIONAL LAW

Ms. Beenish Sultan

NATIONAL DEFENCE UNIVERSITY
ISLAMABAD, PAKISTAN

بسم اللہ الرحمن الرحیم

عَلَّمَ الْإِنْسَانَ مَا لَمْ يَعْلَمْ

TAUGHT MAN THAT WHICH HE KNEW NOT

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Tel: +92-51-9260651-52
Fax: +92-51-9260663
Email: ddpubnres@ndu.edu.pk
Website: http://www.ndu.edu.pk

NATIONAL DEFENCE UNIVERSITY
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www.ndu.edu.pk

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Abstract

Military Courts and their functioning for trial of civilians is a subject of immense interest in the realm of legal and political spheres. In this regard, the Parliament of Pakistan recently passed the 21st amendment to the Constitution, which protected the establishment of military courts to try civilian terrorist suspects. The need for taking such a step was felt in the backdrop of a resolve to undone terrorism from its roots in the country. By virtue of this law, military courts were established to provide speedy justice against such terrorists who threaten the security of Pakistan or wage a war against its sovereignty. Following which, six hardened terrorists were tried and convicted with heinous offences against the State and were awarded with death sentences. These trials not only evoked a strong reaction from legal experts and human rights activists, but also were adjourned by the Supreme Court, after a petition was filed seeking a halt to the implementation of these death sentences by the Supreme Court Bar Association. Nonetheless, this research article endeavors to analyze the admissibility of such military courts from the prism of domestic law of Pakistan and the international law. It also seeks to bring forward a discussion on what measures can be taken if the

establishment of these courts is questionable legally. Finally the paper provides policy recommendations for the stakeholders in order to deal with the state of affairs while adhering to the legal principles.

Prelude

Terrorism today is indeed one of the gravest global phenomenons. It has not only posed threats to States individually, but also managed to swell outside borders having trans-national linkages and effects.[1] In this backdrop, States have tried to deal with this menace by virtue of both kinetic and non-kinetic means. The amalgam of both has in fact been a successful way of countering terrorism in broad terms. Pakistan as a major stakeholder in the wave of terrorism has also shown its resolve in dealing with the menace through military operations and other counter-terrorism strategies. It has been one of the most important players in the scenario and has also been a victim of terrorist factions. Successes in military operations like Zarb-e-Azb and Khyber-1 launched in the year 2014 are an indication of the resolve to deal with terrorism objectively.[2]

In keeping with the above scenario, trial of civilian terrorists in military courts was constitutionally protected by virtue of the 21st amendment'2015 to the country's constitution (Draft attached at Annex A). Soon after it was passed by the Parliament, the amendment evoked criticism from the section of legal and human rights activists'. The establishment of such a system was termed as a violation of the phenomenon of

'separation of powers'[3] as provided to the state institutions by the constitution. Furthermore, in the international law domain, it was also declared to be a system which would violate the right of 'fair trial' of persons in front of a 'competent, impartial and independent tribunal, as given by the section 14 of International Covenant of Civil and Political Rights- ICCPR.

Nonetheless, the key question is that, can the establishment of such a system actually be helpful in providing speedy justice and eradicating the menace of terrorism from the country? By that matter it is also pertinent to analyze the admissibility of establishing military courts in the domestic law of Pakistan and its international obligations. Furthermore, the idea rests on the notion of suggesting a mechanism which is not questionable legally and is also helpful in dealing with the menace of terrorism by taking along every stakeholder including the military.

In this regard, the paper encompasses the analysis of the subject from the realm of four key areas: Military jurisdiction over civilians, International Law and the establishment of military courts, Domestic law of Pakistan, Appraisal of the current situation and findings along with recommendations.

Civilians and Military Jurisdiction

In an aura of counter-terrorism and subsequent military operations within a country by its own armed forces, determining a proper sphere of military authority is indeed a controversial process. In order to protect certain military

objectives in the name of national defence and simultaneously balancing the danger of becoming a 'garrison' State by sacrificing civil liberties is indeed a tedious task. In this regard, it is pertinent to crave out distinction between three major phenomenons of military jurisdiction over civilians: Martial law, Military Justice and law of war.[4]

Firstly, under a martial law, civilians can be put to trial in front of a military commission, when by, invasion, or insurrection martial law has been invoked and the civil courts cannot carry on their functions.[5] While this remains true as a general principle, in a leading case pertaining to trial by military commission during the Civil War the Supreme Court of the US, ruled that civilians could not be subjected to a military trial if conditions did not preclude the civil courts from opening their doors.[6] This doctrine was strongly reaffirmed in Dnc v. Kahanamoka,[7] which related to military jurisdiction over civilians in Hawaii after the Pearl Harbor attack.

Secondly, in the year 1980 a visionary American jurist Sir Robinson Everett contemplated on the applicability of a military justice system on some type of civilians. According to some provisions of the American Uniform Code[8] certain civilians who were allowed by the law of war to be subject to a military court, who aide the enemy against the State, or acts as a spy for the enemy can be put to trial in front of a military court.[9]This system is conveyable in accordance with the

constitutional boundaries as set by virtue of articles and amendments both.

Thirdly, trials of civilians by military tribunals have also been rested on the law of war. For instance, the US Supreme Court held in verdict that the law of war-a branch of international law-authorized the trial by military commission of eight spies who disembarked in New Jersey from a German submarine during the early stages of World War II. Even the possible American citizenship of one spy and the availability of American civil courts were not deemed to grant immunity from military trial, since Congress had authorized such trial pursuant to its constitutional power "to define and punish Piracies and Felonies committed on the high Seas, and offenses against the Law of Nations."

With respect to the constitutional safeguards of grand jury and petty jury the Court reasoned that, ‘”The object was to preserve unimpaired trial by jury in all these cases in which it had been recognized by the common law and in all cases of a like nature as they might arise in the future but not to bring within the sweep of the guaranty those cases in which it was then well understood that a jury trial could not be demanded as of right.”[1]

Since offenses against the law of war, such as spying, had not been triable by jury at common law, there was now no constitutional right to trial by jury or to trial only in the civil

[1]

courts. The law of war is considered to confer upon a victorious belligerent the power to govern occupied territory by military courts. In Madsen v. Kinsella,"[9] the Supreme Court held that a military government court sitting in occupied Germany could even try an American wife who had there slain her husband, an Air Force lieutenant. Speaking of military commissions, the court commented: "Since our nation's earliest days, such commissions have been constitutionally recognized agencies for meeting many urgent governmental responsibilities related to war."' Moreover, absent legislation by Congress to the contrary, the President, as Commander-in-Chief of the Army and Navy, can prescribe the jurisdiction and procedure of such commissions.

Nonetheless, civilians can be put to trial in front of a military court, but with exceptions. The most fundamental being the declaration of war in a country. Following which, the law of war automatically applies over combatants and non-combatants both. This however, will be in consonance with the domestic and international obligations of a country and is significant in providing a distinction between a martial law and state of war.

Military Courts and Military Justice

A noted jurist once stated that: “Looked at from the point of view of domestic legislation, military jurisdiction as an institution presents a rich and heterogeneous panorama. In terms of personal, territorial, temporal and subject-matter jurisdiction, national legislation regulates military justice in a

wide variety of ways. Military jurisdiction varies in terms of functions, composition and operation from one country to another. The position of military courts within the structures of the state and their relationship to the judiciary also vary."[10]

However, it is considered through analysis of legal history of military courts and special tribunals that, they should possess certain characteristics. This is imperative in order to satisfy the attributes of military justice and regulation of modern, effectual armed forces of a democratic state, along with adhering to legal principles which are not devoid of fundamental ideas of 'equality' and the 'rule of law'. Firstly, such courts must acquire the essential 'legal jurisdiction' in order to deal with issues related to the upholding of discipline and effective working. Hence, it means that, these courts should be established under the premise of law of land and made part of regular judicial system of the State. Furthermore, they must be recognized adequately by broad authority to deal efficiently with the different types of persons whose conduct is bound to have an impact on the 'discipline and operational effectiveness of the armed forces.'

Secondly, such courts should not only hold an idea of the compulsion for, and position of, regulation in the armed forces, but also have an understanding of the 'specific requirements of discipline.' The trade in of these two attributes are closely related to the criterion that the court should be either military or teamed 'with judges having

military experience and an intimate knowledge of the operation of the armed forces.'

Thirdly, after their establishment, the military courts and tribunals should carry their conduct in a fair and perceived to be fair manner. In this realm, the idea of fairness is quite imperative 'both for the maintenance of broader societal support for the military justice system and for maintaining the support of the members of the armed forces themselves.'

Furthermore, fourthly, the functioning of military justice systems should be yielding the basic legitimate conditions of domestic law of a State. Exemptions from the Constitution cannot be granted to such kind of justice systems. In this context, while adhering to the principles of international law, this also means that such systems should be submissive to the due process and judicial guarantees of article 14 of ICCPR for those countries that are States parties to the Covenant.

In the light of these requirements, the prescriptions provided by the International Humanitarian law regarding fair trial and due process are a subject of immense relevance. With respect to civilians falling under military jurisdiction, after they are under the power of a party to conflict, there is an arguably established norm that 'no one may be convicted or sentenced, except pursuant to a fair trial affording all essential judicial guarantees.'[2] This aspect will be discussed in the latter part of the paper.

2

However, what is imperative to highlight at this point is that, under the norm of 'practical necessity', military justice system indeed has a role to play. In a nut shell, three criterions arise from these considerations. [11]

- Military courts must be able to bestow justice rapidly. If the primary *raison d'être* for military courts is the dispensation of order as an essential part of operational effectiveness, then it should be enforced adjoining in time to the suspected offence. For example, during a UN peacekeeping mission, setting up a trial after one year of deployment of forces that too in some other country would not serve the purpose of indispensible justice. Delay in providing justice against an offence will indeed result in erosion of discipline and a consequential negative impact on operational effectiveness of the force.
- Portability and deployability of Military courts is a prerequisite both across the country and abroad. If one of the major reasons for possessing an armed force by a State is to facilitate them in undertaking extra-territorial placements for the persistence of the objectives of the State and of international community, then the military justice system within a State should also be capable of conducting trials in the State, both for reasons of practical effectiveness and of justice.

- Military justice system should be able to hold trials in operational theatres at all levels in the range of conflict, ranging from 'peacetime' to 'conflicts'. Due to this latent obligation to hold trials in close immediacy to the areas of active military operations, while the procedures and the body of law which they employ may be quite sophisticated in some cases, the physical circumstances in which military courts hold trials might be quite traditional.

International law and establishment of military courts

Where the establishment of military courts and trial of civilians is permissible by interpretation and neither the United Nations or regional human rights treaties contain specific provisions on the subject of military courts. So while dealing with the subject, there are certain principles which need to be followed under the international law regime. Particularly, while conducting counter-terrorism operations the State is bound by its obligations under binding UN resolutions 1373 and 1267.[12] In this regard, an acquittal by an anti-terrorism court on whatsoever reasons is internationally viewed as an inability of the state to fulfill its obligations. Hence, Military courts are set up politically, keeping this larger context in view to enable the state to fulfill its obligations for countering terrorism. However, the right of fair trial should not be violated in any circumstance.

In this regard, the section 14 of International Covenant of Civil and Political Rights- ICCPR deems the right of fair trail of persons in front of a 'competent, impartial and independent tribunal' necessary. (Placed at Annex B) The provisions of article 14 apply to all courts and tribunals within the scope of that article whether ordinary or specialized, civilian or military (even that try civilians). Keeping in this mind, the general comment 32 of the Human rights Committee on this section while dealing with the establishment of military courts for trying civilians emphasis on the issues 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."*
- *"The trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned. Therefore, it is important to take all necessary measures to ensure that such trials take place under conditions which genuinely afford the full guarantees stipulated in article 14."*
- *"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".

If this section is to be kept in mind, terrorism is to be considered as a special offence creating a special situation in a country, where the civilian courts are unable to deal with such cases. However, issue is related to the kind of civilian terrorist suspects. Can they be the citizens of a State or can only be foreigners? The US faced this very issue after 9/11 where according to the Patriot Act 2001, trial of suspected civilian terrorists in front of a military tribunal was given permissibility. However, only foreigners and extradited suspects to the US by other countries were put to trial. They were also detained outside the territorial boundaries of the US in Guantanamo Bay; but what about terrorist suspects who are citizens of the US? Quite recently, in the year 2012, the National Defence Authorization Act was passed which deemed permissible the detention of American citizen who are suspects of terrorism without being put to trial both in front of a civil court or a military court. The rationale behind this Act seems to be a resolve to deal with the menace of terrorism without getting in to the debate of legally justifiable mechanisms. However, detention without trial based merely on suspect is indeed a human rights abuse.

On the other hand, on 14th march' 2014 the Moroccan cabinet approved a new draft legislation regarding the military

judicial system. Upon its adoption by the Moroccan parliament, the bill "completely prohibited the referral of civilians to trial before military courts in times of peace, regardless of the nature of the alleged crime or the status of the accused and even if military personnel were allegedly involved in the perpetration of the crime in question. The bill further provided that the Chief Justice on military courts must be a civilian judge and increases the representation of civilian judges sitting on military courts, including appeals chambers in particular. Under this bill, civilian judges will make up the majority of judges sitting on military criminal courts. The bill further allows for civilian prosecutors to present cases before military courts. Importantly, the bill eliminates the ability for military courts to review cases involving "crimes committed against state security from abroad", placing such cases under the sole jurisdiction of civilian courts."

Both of the cases as mentioned above are two extreme models for dealing with terrorism and role of military. However, the point of emphasis remains that, as the military is directly involved in counter-terrorism operations, it should be considered as a stakeholder in the process of bringing the suspect to justice. However, states have to evolve a mechanism in which their role is not questionable and is in consonance with Article 14 of ICCPR.

Domestic law of Pakistan

As far as Pakistan's domestic law is concerned, counter-terrorism and role of military justice has been a crucial issue.

Unfortunately, Anti-Terrorism laws and Civil Courts have not been able to deliver according to the expectations. The situation was further exasperated in the aftermath of 9/11, andanti-terrorism measures required special attention. Eleven new courts in KPK, four in Sindh and more than 41 throughout the country were established under the new laws passed in 2001. Interestingly, only one year after in 2002 an amendment was introduced in these laws and a military person was appointed as one of the three members of the anti-terrorist court, along with denying the right of appeal to the convicts. After facing immense criticism, after ten months the law was amended to deny military any role in the civil court system.

However today thirteen years later, Pakistan is in a state of war against non-state actors even in urban cities and is involved in kinetic operations against these militants since a very long time. Now yet again there is a question of the extent to which the military should be given a role in its counter-terrorism endeavors. The military was called upon for 'action in aid of civil power, and recently its role was enhanced by allowing prosecution of civilians in military courts by the 21st amendment to the constitution, Protection of Pakistan Act 2014 and Army Act 1952. As soon as the 21st amendment was passed, allowing the establishment of military courts for 2 years, the international commission of jurists condemned it quite severely. Even within Pakistan it faced criticism from almost every front. The biggest question raised was related to

two major issues: right of fair trial for every person and fundamental rights as guaranteed in Articles 8 to 26 of the Constitution and over stretching the role of military in the domain of judiciary.

These amendments made the military courts constitutionally acceptable, in order to fill the gap which was perceived in the deliverance of justice against terrorist cases by the Anti-Terrorist courts in Pakistan. Critics viewed this to be a military system allowed to run in parallel with the civil one. Nine courts were established and gave a death sentence to six 'jet black terrorists'. Their identity and procedure of litigation was kept in secrecy due to security issues and the right of appeal was made questionable. Hence, numerous issues while keeping in view the already established laws in Pakistan arose subsequently, which included:

- Violation of Article-10A of the constitution of Pakistan.
- Accused is going to be guilty until proven innocent; which is a reverse in ordinary courts ,
- It resurrects the 'doctrine of necessity',
- No benefit of doubt will be allowed to the accused,
- Evidentiary value will be given to the opinion of investigation
- The establishment of military courts was already struck down by the Supreme Court detailed judgment *Liaquat Hussain vs. the federation of Pakistan.*[13]

- These military trials will be of suspected religious terrorists under the Army Act, without being provided fundamental rights, prosecuted by serving Army officers, whose decision cannot be challenged on the basis of the constitutional principle of 'separation of powers'.

Nonetheless, Pakistan has a legacy of Anti-terrorism laws and policies. It has been trying to evolve a mechanism which would eventually do away with this menace once and for all. The Anti-Terrorism Act 1997 and subsequent amendments with 2014 being the most recent legislation in this regard, has numerous loop holes and has not been able to deliver in dealing with the menace according to the expectations. It is for the Government to decide that whether it is to adopt the American role model or the one made in Morocco as discussed earlier, the question is, military courts or the civilian ones, will they be able to curb the menace of terrorism once and for all?

An Appraisal

The establishment of military courts for trial of civilians is indeed a controversial issue. It raises numerous questions in the domain of providing the right of fair trial to a civilian terrorist suspect. On the other hand, it also seems to be providing a judicial system running in parallel to the already established judicial system of a country, when martial law is also not applied. With the change in nature of crimes to terrorism and insurgency, the role of military of a country is also bound to change. They are directly involved in civil

hostilities and have numerous terrorist suspects detained during operations. Numerous countries have legislated against the establishment of such judicial systems or if in favor have received immense criticism. Morocco and Sudan are some recent examples. On the other hand, the US Patriot Act 2001 is used as a popular example for establishing such tribunals.

While all of these examples are kept in view, it is pertinent to note that, in all of these cases applicability of law of war is not the subject. The bill passed in Morocco also talks about the times of peace and after 9/11 America was acting in self defence against an incident of terrorism, while the suspects were thousands of miles outside its territorial boundaries in Afghanistan.

Military courts in Pakistan are also subject to criticism because they are enacted in haste through the 21st amendment and are declared to be violating the basic structure of the Constitution. Furthermore, it is deemed to be confusing the distinction between martial law, law of war and military justice as discussed earlier. Furthermore, due to extreme secrecy and no right of appeal provided to the convicts, the decisions of these courts are subject to controversy.

If the Government deems it necessary to put the civilian terrorist suspects to trial in military courts, it will first have to deal with the issues at the grass root level. Technically, under article 245 of the Constitution of Pakistan, the Police Act and the Pakistan Army Act 1952, sec 79 and 121 of the Pakistan

Penal Code and the Action in Aid of Civil power Regulations, the military is not restricted to territory and the help can be extended to the individual level. As, Pakistan is in a state of war against non-state actors, such measures are allowed under its obligations to the UN resolutions as already discussed in the paper. However, as special circumstances demand special remedies. The establishment of military courts is an indicator of the urgency in dealing with terrorism in the country.

Findings

In the course of the discussion above, major findings in this regard include:

Special circumstances require special remedies

Both the civil and military systems may have their advantages and disadvantages. Even in the United States, military commissions were established through the Presidential Order 2001, which have underwent immense criticism by human rights activists. As far as Pakistan's scenario is concerned, both the international law and domestic law may allow the establishment of military courts to prosecute civilians, but the government must stress the fact that it is in special circumstances only.

Distinction between Martial law, Military Justice and Law of War

There is a need for the Supreme Court should establish a legal environment of applying the law of war in Pakistan through a detailed judgment, which allows special steps to

deal with the situation. The legal circumstances are very different today than the ones back in the year 1997; as, now the non-state actors are attacking the State and challenging its writ. This has called upon a war in the country, which applies the domestic law of war. However, the issues as raised above should be kept in mind and the right of fair trial should be extended to the accused in any case. This is doable as, the PPC, CRPC, ATA 1997 and Evidence Act 1984 are all extended to the military courts while dealing with terrorist cases.

Recommendations

The way forward rests in the notion of not considering military courts as a permanent solution for countering terrorism and only selective cases should be referred to them. In this regard, a provision of the Army Act states that the Code of Criminal Procedure and the Qanun-e-Shahadat will be applicable to trials under the Army Act. Hence, if the establishment of such courts is challenged under the current system, the Supreme Court should provide a distinction between law of peace and law of war in the country. If the apex court fails to declare a distinction between these laws, military courts could be declared *ultra vires*.

- In order to avoid legal difficulties by the establishment of military courts, the Supreme Court needs to provide a legal environment in the country by distinguishing between the law of peace and of conflict. The traditional declaration of war is no longer required for the law of war to apply in the present circumstances.

- A difference between criminals and terrorists should also be provided in the ATA, which is exploited by the administrative flaws in the Anti-Terrorism Courts.
- The working of military courts can be over seen by the ministry of interior, which can even ask for reports on various cases. Appeal to the decision of a military court should be allowed in a high court, which would deal with controversy in the long run.
- In order to deal with the wave of terrorism, the approach of Government should be towards establishing a wholesome package with inclusion of de-radicalization and re-habilitation. In this regard, the model of Srilanka can be used as a starting point.

Annex A

Constitution (Twenty-First Amendment) Act, 2015
Passed by the National Assembly: January 6, 2015
Passed by the Senate: January 6, 2015
Presidential Assent Received: January 7, 2015
A Bill further to amend the Constitution of the Islamic Republic of Pakistan

WHEREAS extraordinary situation and circumstances exist which demand special measures for speedy trial of certain offences relative to terrorism, waging of war or insurrection against Pakistan and prevention of acts threatening the security of Pakistan by the terrorist groups using the name of religion or a sect and also by the members of armed groups, wings and militas;

AND WHEREAS there exists grave and unprecedented threat to the integrity of Pakistan and objectives set out in the Preamble to the Constitution by the framers of the Constitution, from the terrorist groups by raising of arms and insurgency using the name of religion or a sect, or from the foreign and locally funded anti-state elements;

AND WHEREAS it is expedient that the said terrorists groups including any such terrorists fighting while using the name of religion or a sect, captured or to be captured in combat with the Armed Forces or otherwise are tried by the courts established under the Acts mentioned hereinafter in section 2;

AND WHEREAS the people of Pakistan have expressed their firm resolve through their chosen representatives in the all parties conferences held in aftermath of the sad and terrible terrorist attack on the Army Public School at Peshawar on 16 December 2014 to permanently wipe out and eradicate terrorists from Pakistan, it is expedient to provide constitutional protection to the necessary measures taken hereunder in the interest of security and integrity of Pakistan;
It is hereby enacted as follows:-

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1. Short title and commencement:

(1) This Act may be called the Constitution (Twenty-First Amendment) Act, 2015.

(2) It shall come into force at once.

(3) The provisions of this Amendment Act shall remain in force for a period of two years from the date of its commencement and shall cease to form part of the Constitution and shall stand repealed on the expiration of the said period.

2. Amendment of Article 175 of the Constitution: In the Constitution of the Islamic Republic of Pakistan, hereinafter called the Constitution, in Article 175, in clause (3), for the full stop at the end a colon shall be substituted and thereafter, the following proviso shall be inserted, namely:-

Provided that the provisions of this Article shall have no application to the trial of persons under any of the Acts mentioned at serial No. 6, 7, 8 and 9 of sub-part III or Part I of the First Schedule, who claims, or is known, to belong to any terrorist group or organization using the name of religion or a sect.

Explanation:- In this proviso, the expression 'sect' means a sect of religion and does not include any religious or political party regulated under the Political Parties Order, 2002."

3. Amendment of First Schedule of the Constitution: In the Constitution, in the First Schedule, in sub-part III of Part I, after entry 5, the following new entries shall be added, namely:-

6. The Pakistan Army Act, 1952 (XXXXIX of 1952).
7. The Pakistan Air Force Act, 1953 (VI of 1953).
8. The Pakistan Navy Ordinance, 1961 (XXXV of 1961).
9. The Protection of Pakistan Act, 2014 (X of 2014).

Statement of Objects and Reasons

An extraordinary situation and circumstances exist which demand special measures for speedy trial of offences relating to terrorism, waging of war or insurrection against Pakistan and prevention of acts threatening the security of Pakistan. There exists grave and unprecedented threat to the territorial integrity of Pakistan by miscreants, terrorists and foreign

funded elements. Since there is an extraordinary situation as stated above it is expedient that an appropriate amendment is made in the Constitution.

The Bill is designed to achieve the aforesaid objects.

Source:: Draft of bill presented in the National Assembly obtained from the website of the National Assembly: http://www.na.gov.pk/uploads/documents/1420547178_142.pdf

Source:: Formatting into pakistani.org XML by Shehzaad Nakhoda. Converstion into HTML using pakistani.org xlst by Shehzaad Nakhoda.

Annex B

International Covenant on Civil and Political Rights

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.

Entry into force 23 March 1976, in accordance with Article 49.

Article 14

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (order public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (c) To be tried without undue delay; (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it; (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court; (g) Not to be compelled to testify against himself or to confess guilt.

In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Endnotes

[1] The United Nations Security Council Resolution 2195(2014) urged international action to break links between terrorists, trans-national organized crime.

[2]Operation Updates: 22 militants killed in Datta Khel air strikes, Tribune, available at: http://tribune.com.pk/story/722202/army-launches-operation-in-north-waziristan/, accessed on: 30th April' 2015.

[3]Separation of powers or *trias politica* is a model of democracy that involves the separation of political power between the government's three branches – the executive, the legislature and the judiciary. In a system where there is a separation of powers, each branch is constrained from intervening in the area of responsibility of another branch.

[4]Robinson O. Everett, '*Military Jurisdiction over Civilians*', Military Jurisdiction, Vol. 1960:366, 366-367.

[5] Ibid.

[6] Ibid.

[7]Ibid

[8]Ibid

[9] American Uniform Code, Article: 4, 18,48,104,106.

[10] Federico Andreu-Guzmán, Military Jurisdiction and International Law: Military Courts and Gross Human Rights Violations, vol. 1 (Geneva: International Commission of Jurists, 2004) at 13 [Andreu-Guzmán, Military Jurisdiction]. See also Andreu-Guzmán, Military Jurisdiction at 153-378 (Part II), which provides a comprehensive survey of domestic legislation dealing with military jurisdiction in 30 states.

[11] Micheal R. Gibson, 'International Human Rights Law and the Administration of Justice through Military Tribunals: Preserving Utility while Precluding Impunity, Journal of International law and International Relations, Vol. 4 (1). 10-14. http://www.un.org/sc/committees/1267/

[12]http://www.un.org/sc/committees/1267/

[13] The Supreme Court struck down the formation of military courts as "unconstitutional, without lawful authority and of no legal effect" in its historic verdict available at: (PLD 1999 SC 504).