

# **Pakistan: Civil society challenges military courts**

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## **Requests apex court to declare trial of civilians under the Pakistan Army Act, 1953 null and void**

**ISLAMABAD: Some members of civil society have challenged the trial of civilians—allegedly involved in attacks on civil and military properties and memorials on May 9 and May 10—by military courts and requested the Supreme Court to declare these trials as “void ab initio and of no legal effect”.**

The country’s civil and military leaders on May 16 endorsed a decision of a corps commanders to hold trial of the people who vandalized and set fire to military installations after arrest of Pakistan Tehreek-e-Insaf (PTI) chief on May 9 under the Pakistan Army Act 1952 and the Officials Secrets Act, 1923.

Later, the civilian authorities handed over dozens of peoples—mostly the PTI workers and supporters who were rounded up during a massive crackdown—to the military authorities for their summary trial.

The constitutional petition moved in the apex court through Advocate Faisal Siddiqi on Saturday referred to a particular First Information Report (FIR)—No 96 of 2023 (Police Station Sarwar Road, Lahore)—to highlight that people chosen for court martial after May 9-10 vandalism were selected arbitrarily.

“The...arbitrary and discriminatory selection of the cases to be tried by military courts is obvious and apparent from the fact that in FIR No. 96 of 2023, fifty civilian accused persons were nominated with identical roles for the offenses committed under Section 302, 324, 395, 436, 452, 440, 427, 353, 186, 290, 291, 153, 152, 148, 149, 147, 109, 505, 120B, Pakistan Penal Code, 1860, and Section 7, ATA, 1997.

“However, the [authority] arbitrarily and discriminatorily sought delivery of custody of only fifteen civilian accused persons despite the fact that no offense under the Pakistan Army Act, 1952, Read with, Official Secrets Act, 1923, was mentioned in the aforesaid FIR No. 96 of 2023 and the identical roles were assigned to all fifty civilian accused persons nominated in the FIR,” it said.

The petition asked if the trials of civilians under the Pakistan Army Act, 1952 read with the Official Secrets Act, 1923, in relation to allege offenses recorded in FIR No 96 of 2023 and other like FIRs all arising out of the alleged criminal acts committed on May 9-10 are violative of Section 2(d)(ii) and 59(4), the Pakistan Army Act, 1952 read with Sections 3, 3A, 7, and 9 of the Official Secrets Act, 1923.

It also asked whether the trials of civilians in military courts are violative of Article 25 of the Constitution until and unless legal and reasonable guidelines are framed to structure the discretion

not to arbitrarily try civilians under the Pakistan Army Act, 1952.

“Whether the trials of civilian accused persons.... are violative of Article 10-A, 25, and 175 of the Constitution until and unless the constitutional right to a fair trial and due process, including but not limited to a statutory right of appeal to an independent court—with its full power of appellate review— is provided through an appropriate legislation?

“Whether all trials of civilian...should be transferred to appropriate criminal courts of general and special jurisdiction (ie, under Criminal Procedure Code, 1898, Anti-Terrorism Act, 1997, and by a magistrate under Section 13 of the Official Secrets Act, 1923) for trials in accordance with such relevant law and in compliance with the fair trial and due process rights guaranteed under the Constitution and law?”

The petitioners also asked the court if the federal government could use intelligence agencies in the arrest and detention of political leaders and workers.

They also asked if the presence of intelligence personnel within any court premises except with permission of the court is violative of Articles 10A, 15 and 175, Constitution, 1973.

They requested the court to declare that the trials of civilian under the Pakistan Army Act, 1952 read with the Official Secrets Act, 1923 in relation to allege offenses recorded in FIR No 96 of 2023 and other like FIRs are violative of Section 2(d)(ii) and 59(4) of the Pakistan Army Act, 1952 read with, Sections 3, 3A, 7, and 9 of the Official Secrets Act, 1923.

“Consequently, all such investigations and trials of civilian accused persons and all actions taken pursuant to it, are void ab initio and of no legal effect.”

They also asked the apex court to declare that the trials of civilians by military courts violative of Article 25 of the Constitution until and unless legal and reasonable guidelines are framed to structure the discretion not to arbitrarily try civilian accused persons under the Pakistan Army Act, 1952.

“Declare that the trials of civilian accused persons...are violative of Article 10-A, 25, and 175 [of the] Constitution until and unless the constitutional right to a fair trial and due process, including but not limited to a statutory right of appeal to an independent court with its full power of appellate review is provided through an appropriate legislation,” it said.

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