

IN THE SUPREME COURT OF PAKISTAN

CONSTITUTIONAL BENCH

(Original/Appellate/Advisory Jurisdiction)

Present

Justice Amin-ud-Din Khan, Senior Judge
Justice Jamal Khan Mandokhail
Justice Muhammad Ali Mazhar
Justice Syed Hasan Azhar Rizvi
Justice Musarrat Hilali
Justice Naeem Akhter Afghan
Justice Shahid Bilal Hassan

I.C.A. 5/2023 in C.P. 24/2023 & C.M.A.10534/2023

Shuhada Forum, Balochistan through its Patron in Chief, Nawabzada Jamal Raisani, Quetta Cantt. and others **v.** Justice (R) Jawwad S. Khawaja and others

I.C.A.6/2023 IN C.P. 24/2023 & C.M.A.10535/2023

The Province of Punjab, through Secretary Punjab, Lahore **v.** Jawwad S.Khawaja and others

I.C.A.10/2023 IN C.P.26/2023 & C.M.A.10536/2023

Federation of Pakistan through the Secretary, Ministry of Law and Justice, Islamabad **v.** Karamat Ali and others

I.C.A.11/2023 IN C.P.30/2023 & C.M.A.10537/2023

Federation of Pakistan through Secretary Ministry of Law and Justice, Islamabad **v.** Supreme Court Bar Association of Pakistan, through its Secretary, Islamabad and others

I.C.A.12/2023 IN C.P.35/2023 & C.M.A.10538/2023

Federation of Pakistan through Secretary, Ministry of Law and Justice Islamabad **v.** Supreme Court Bar Association of Pakistan, through its Secretary, Islamabad and other

I.C.A.13/2023 IN C.P.27/2023 & C.M.A.10539/2023

The Federation of Pakistan through the Secretary Ministry of Law and Justice, Islamabad **v.** Zaman Khan Vardag and others

I.C.A.14/2023 IN C.P.24/2023 & C.M.A.10540/2023

Federation of Pakistan through the Secretary Law, Justice & Parliamentary Affairs Division, Ministry of Law & Justice Islamabad **v.** Jawwad S.Khawaja and others

I.C.A.15/2023 IN C.P.35/2023 & C.M.A.10541/2023

The Province of Balochistan through the Chief Secretary Services & General Administration Department Quetta **v.** Supreme Court Bar Association of Pakistan, through its Secretary, Islamabad and others

I.C.A.16/2023 IN C.P.26/2023 & C.M.A.10542/2023 & C.M.A.597/2024

The Province of Balochistan through the Chief Secretary Services & General Administration Department Quetta **v.** Karamat Ali and others

I.C.A.17/2023 IN C.P.24/2023 & C.M.A.10543/2023

The Province of Balochistan through the Chief Secretary Services & General Administration Department Quetta **v.** Jawwad S.Khawaja and others

I.C.A.18/2023 IN C.P.30/2023 & C.M.A.10544/2023

The Province of Balochistan through the Chief Secretary Services & General Administration Department Quetta **v.** Supreme Court Bar Association of Pakistan, through its Secretary, Islamabad and others

I.C.A.19/2023 IN C.P.25/2023 & C.M.A.10545/2023

The Province of Balochistan through the Chief Secretary Services & General Administration Department Quetta **v.** Aitzaz Ahsan and others

I.C.A.20/2023 IN C.P.25/2023 & C.M.A.10546/2023

Federation of Pakistan thr. Secretary, M/O. Defence, Rawalpindi **v.** Aitzaz Ahsan and others

I.C.A.21/2023 IN C.P.28/2023 & C.M.A.10547/2023

Federation of Pakistan through, Secretary, Ministry of Defence, Rawalpindi **v.** Junaid Razzaq and others

I.C.A.22/2023 IN C.P.25/2023 & C.M.A.10548/2023

Federation of Pakistan thr. Secretary, Ministry of Interior, Islamabad **v.** Aitzaz Ahsan and others

I.C.A.23/2023 IN C.P.30/2023 & C.M.A.10549/2023

Federation of Pakistan through Secretary Ministry of Interior, Islamabad **v.** Supreme Court Bar Association of Pakistan, through its Secretary, Islamabad and others

I.C.A.24/2023 IN C.P.26/2023 & C.M.A.10550/2023 & C.M.A.598/2024

Federation of Pakistan through the Secretary, Ministry of Interior, Islamabad **v.** Karamat Ali and others

I.C.A.25/2023 IN C.P.28/2023& C.M.A.10551/2023

Federation of Pakistan through, Secretary, Ministry of Interior, Islamabad **v.** Junaid Razzaq and others

**For Appellant(s)/
Applicant(s)**

For Federation of Pakistan through M/o Law:

Mr. Mansoor Usman Awan, AGP
Ch. Aamir Rehman, Addl. AGP
Raja Muhammad Shafqat Abbasi, DAG
Mr. Anis Muhammad Shahzad, AOR
Mr. Jawaid Masood Tahir Bhatti, AOR
Dr. Nazakat Ali *Bhand*, Asst Solicitor, M/o Law
Mr. Hasan Mehmood, Legislative Advisor M/o Law
(in ICAs No.10 to 14 & 22 to 25/2023)

For M/o Defence:

Khawaja Haris Ahmad, Sr. ASC
Assisted by Miss Zaynib Chaudhry, Advocate and Mr. Hamza Khalid, LLB (Hons)
Brig. (R) Falak Naz, Legal Advisor, M/o Defence
Lt. Col. Zahid Hussain, LO, M/o Defence
Lt. Col. Muhammad Ali, LO M/o Defence
(in ICAs No.20 & 21/2023)

For Province of Balochistan:

Mr. Sikandar Bashir Mohmand, ASC
Mr. M. Ayaz Khan Swati, Addl.AG Balochistan
Mr. Tariq Aziz, AOR
Assisted by M/s Abdullah Noor, Advocate Hamza Azmat Khan, Advocate Barrister Khizer Hayat Khan, Barrister Imran Khan and Muhammad Aarsal Kamran Advocate.
(in ICAs No.15 to 19/2023)

For Shuhada Forum Balochistan:

Mr. Shumail Butt, ASC
(through video link from Peshawar)
Mr. Mehmood A. Sheikh, AOR
(in ICA No.5/2023)

For Province of Punjab: Mr. Wasim Mumtaz Malik, Addl. AG Punjab
Mr. Sanaullah Zahid, Addl. AG, Punjab
(in ICA No.6/2023)

For Govt. of Sindh: Mr. Saifullah, Addl. AG, Sindh
Mr. Sibtain Mehmood, Addl. AG Sindh
(Via video link, Karachi)

For the Respondents: Khwaja Ahmad Hosain, ASC
For Justice (R) Jawwad S. Khawaja: *Assisted by Ms. Rida Hosain, Advocate*
(in ICAs No.5, 6, 14 & 17/2023)

For Lahore High Court Bar and Lahore Bar Associations: Mr. Hamid Khan, Sr. ASC
Mr. Muhammad Waqar Rana, ASC
Mr. Ajmal Ghaffar Toor, ASC
Syed Rifaqat Husain Shah, AOR
(in ICAs No.5, 6, 11, 15 & 20/2023)

For Ch. Aitzaz Ahsan: Sardar Muhammad Latif Khan Khosa, Sr. ASC
Barrister Ch. Aitzaz Ahsan, Sr. ASC
Mr. Shahbaz Khan Khosa, ASC
Assisted by Barrister Zunaira Fayyaz, M/s. Sozain Jehan, Ghulam Murtaza Malik, Syed Mehmood ul Hassan Gilani and Usman Zakir Abbasi, Advocates.
(in ICAs No.19, 20 & 22/2023)

For Junaid Razzaq: Mr. Salman Akram Raja, ASC
Assisted by M/s Asad Rahim Khan, Malik Ahsan Mehmood, Atira Ikram, Raja Hamza Anwar, Wyena Qureshi, Minahil Fatima, M. Ali Talib, Muhammad Shakeel Mughal, Muhammad Hamza Aslam, Sardar Ahsan Raza and Malik Ghulam Sabir, Advocates.
(in ICAs No.21 & 25/2023)

For Karamat Ali, etc: Mr. Faisal Siddiqui, ASC
(in ICAs No.10, 16 & 24/2023)

- For Imran Khan Niazi: Mr. Uzair Karamat Bhandari, ASC
Dr. Usman Mirza, AOR
Assisted by Mr. Ali Uzair Bhandari, Advocate.
(in ICAs No.19, 20 & 22/2023)
- For Aamir Sabir: Mr. Abid S. Zuberi, ASC
Ms. Bushra Qamar, ASC
Assisted by M/s Amna Khalili, Saif Shahid and Ashar Khan Advocates
Mr. Muqtedir Akhtar Shabbir, ASC
(via video link from Lahore)
(in ICA No.12/2023)
Mr. Zaman Khan Vardag, ASC, in-person
(via video link from Lahore)
(in-person in ICA No.13/2023)
- For Supreme Court Bar Association: Mian Rauf Atta, ASC/President,
Mr. Muhammad Aurangzeb Khan, ASC/Acting Secretary.
- Voluntarily appeared: Mr. Hafeez Ullah Khan Niazi, In-person.
(father of one of the convicts)
- For Province of KPK: Shah Faisal Ilyas, Addl.AG KPK
- Dates of hearings: 9th, 10th, 12th and 13th December 2024, 7th to 10th, 13th to 17th, 28th to 31st January, 3rd, 4th, 10th to 13th and 18th to 20th, 24th to 27th February, 3rd to 6th, 10th to 13th March, 7th to 9th, 14th to 18th and 28th April and 5th May, 2025.

Short Order

The aforesaid Intra Court Appeals (ICA) have been brought under Section 5 of the Supreme Court (Practice and Procedure) Act, 2023 to challenge the judgment dated 23.10.2023 passed by the learned Bench of this Court in Constitution Petition Nos.24, 25, 26, 27, 28 & 30 of 2023, filed under Article 184 (3) of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution"), whereby the Court, by majority (4 to 1), declared that clause (d) of subsection (1) of Section 2 of the Pakistan Army Act, 1952 (in both of its sub clauses (i) & (ii)) and subsection (4) of Section 59 of the said Act are *ultra vires* the Constitution and of no legal effect. It was further declared that the trials of civilians/accused (around 103 persons) and all other persons who are now, or may at any time be, similarly placed in relation to the events arising from and out of the 9th and 10th May, 2023, shall be tried by Criminal Courts of competent jurisdiction established under the ordinary and or special law of the land. However, Mr. Justice Yahya Afridi (present CJP) recorded his dissent to the majority judgment

and abstained from declaring clause (d) of subsection (1) of Section 2 of the Pakistan Army Act, 1952 (in both of its sub clauses (i) & (ii)) and subsection (4) of Section 59 of the said Act, *ultra vires* the Constitution. On the other hand, he concurred and joined with the other members of the Bench that the accused persons, in relation to the events arising from and out of 9th and 10th May, 2023 shall be tried by Criminal Courts of competent jurisdiction established under the ordinary and/or special laws.

2. After providing extensive opportunity of hearing to all concerned and for reasons to be recorded later, subject to augmentation and explication in detail, the aforesaid ICA(s) are allowed by majority of 5 (comprising J. Amin-ud-Din Khan, J. Muhammad Ali Mazhar, J. Syed Hasan Azhar Rizvi, J. Musarrat Hilali, and J. Shahid Bilal Hassan) in the following terms:

i. The impugned judgment is set aside and as a consequence thereof, sub-clauses (i) & (ii) of Clause (d) of subsection (1) of Section 2 of the Pakistan Army Act, 1952 and subsection (4) of Section 59 of the Pakistan Army Act, 1952 are restored. With due deference to the impugned judgment, such provisions in our view could not be declared *ultra vires* on the anvil or bedrock of sub-article 5 of Article 8 of the Constitution which only provides that the rights conferred by the said Chapter (Fundamental Rights) shall not be suspended except as expressly provided by the Constitution, thus it does not control or preponderate upon the rigors of sub-article 3 of the said Article. There was, in fact, no question with regard to the suspension of any fundamental right involved within the sphere of influence or realm of Article 233 of the Constitution.

ii. According to statistics shared by the learned AGP during the course of his arguments, 39 military installations, Army works/establishments at various places (23 in Punjab, 08 in KPK, 07 in Sindh and 01 in Balochistan) including GHQ, Core Commander House, Lahore (which is also a camp office), Mianwali Air Base, and ISI Offices/set up in Sargodha, Faisalabad, and Rawalpindi were targeted/attacked on 09.05.2023. He further argued that all attacks were made by design and occurred on one and the same day, within a span of 4 to 6 hours, across the country. According to him, these incidents left an indelible mark and represented the darkest moments in the nation's history. As a result of these events, several First Information Reports (FIRs) were lodged at various Police Stations. He further argued that on account of dereliction of duty, stern disciplinary actions were also taken against several army officials. Additionally, the attack on the Core Commander House, Lahore, rendered the command dysfunctional for at least 4 to 5 hours, creating a highly dangerous situation. All fundamental rights enshrined and envisaged under the Constitution are subject

to reasonable restrictions imposed by the law. Peaceful assembly, association, or public demonstration/protest within the bounds and precincts of reasonable restrictions imposed by the law is not prohibited but without violating or breaking the law, or taking the law in one's hands.

iii. The learned counsel representing the respondents never refuted or denied the factum of such incidents but they candidly and forthrightly argued, from beginning to end, that though the accused/convicts have committed offences, they should be tried by Anti-Terrorism Courts and not through Court Martial or by Military Courts, as this violates the right to a fair trial as envisioned under Article 10-A of the Constitution, and under sub-article (3) of Article 175 of the Constitution, Military Courts cannot exercise judicial functions in the cases of civilians (the argument with regard to the applicability of sub-article (3) of Article 175 of the Constitution was also raised in the original proceedings but not approved or accepted in the majority impugned judgment). Whereas, the learned counsel for the appellants maintained that due to the striking down of the law in question, no action can be taken even against the hardcore criminals and terrorists involved in the attacks on army installations and/or against the martyrdom of innocent civilians and personnel of the armed forces and even in the present situation, no action can be taken in the national security and interest against the persons accused of espionage or spies of enemy countries for the offences mentioned in sub-clause (ii) of clause (d) of subsection (1) of Section 2 of the Pakistan Army Act, 1952.

iv. No doubt, all such miscreants, lawbreakers, and perpetrators of such incidents are liable to be punished on proving their guilt, subject to right of appeal against their conviction. An independent right of appeal before an independent forum is also a basic limb of the doctrine of due process and the right to a fair trial, as enshrined and envisioned under Article 10-A of the Constitution. Various provisions were vigorously highlighted by the learned counsel for the appellants to demonstrate that under the Pakistan Army Act, 1952 ("Army Act"), and the Rules framed thereunder, the right to a fair trial and due process is fully protected and safeguarded and the process of trial under the Army Act is compliant with the recognized principles of criminal justice as held in the cases of Brig. (Retd.) F. B. Ali (PLD 1975 SC 506), Shahida Zahir Abbasi (PLD 1996 SC 632), and the judgment rendered in the case of District Bar Rawalpindi (PLD 2015 SC 401). It was further averred that clause 2 (d) was inserted into the Army Act *vide* Section 2 of the Defence Services Laws Amendment Ordinance, 1967, which is protected under Article 268 of the Constitution. The learned AGP also asserted that the right to a fair trial, as

enshrined under Article 10-A of the Constitution, and due process of law, was available to all such accused persons of the 9th and 10th May incidents, despite the exactitudes of Article 8 (3) of the Constitution.

v. In the case of Shahida Zahir Abbasi (*supra*), it was held that “the rules of procedure applicable for trial of a person in a criminal case before a Military Court do not violate any accepted judicial principle governing trial of an accused person (...) the procedure prescribed for trial before Military Courts is in no way contrary to the concept of a fair trial in a criminal case”. Likewise, the judgment in plurality rendered in the District Bar Association case (*supra*) held with reference to Article 8 of the Constitution that the “Court Martial are constituted and established under the Pakistan Army Act, 1952, and jurisdiction thereupon is also conferred by the said Act. Their existence and validity is acknowledged and accepted by the Constitution in so far as they deal with the members of the Armed Forces and other persons subject to the said Act. This has not been disputed before us”. In the same case, the plurality judgment also refers to the case of Col. (R) Muhammad Akram v. Federation of Pakistan through Secretary Ministry of Defence, Rawalpindi and another (**PLD 2009 FSC 36**), where the “provisions of the Pakistan Army Act were scrutinized by the Federal Shariat Court (...) and generally passed muster”.

vi. In our view, the provisions merely accentuating the right to a fair trial and due process in any statute and its actual application and proper implementation during the trial are two distinct features and situations. If an independent right of appeal is provided in the High Court for challenging the original order or internal departmental appellate order of conviction, then obviously, the High Court in exercise of its appellate jurisdiction as conferred under the provisions of the Code of Criminal Procedure, 1898, may examine whether an equal and fair opportunity to defend the charges was afforded to the convict, whether sufficient evidence was available to substantiate the charges, and whether proper procedure in the trial was followed in letter and spirit.

vii. It is expansively evident from the impugned judgment, including the additional note, that during the original proceedings, the learned AGP, time and again, requested for time to seek instructions from the government on whether an independent right of appeal may be provided to the persons not otherwise subject to the Army Act, who are accused of the offences of (i) seducing or attempting to seduce any person subject to this Act from his duty or allegiance to Government, or (ii) having committed in relation to any work of defence, arsenal, naval, military or air force establishment or station, ship or aircraft or

otherwise in relation to the naval, military or air force affairs of Pakistan, an offence under the Official Secrets Act, 1923 as provided under clause (d) of Section 2 (1) of Army Act, and even in the concluding session on 5th May, 2025, the learned AGP reiterated that if this Constitutional Bench refers the matter to the Government/Parliament to amend the law and create a window of an independent right of appeal over and above the provision of appeal already provided under Section 133-B of the Pakistan Army Act, 1952, that will be respected and considered seriously. In support of this contention, he also cited the judgment of this Court rendered in the case of Jurist Foundation versus Federal Government (PLD 2020 SC 1).

viii. While restoring the provisions of Army Act, that were struck down by means of the impugned judgment in the original proceedings before this Court, we, in unison, sensitize the need of legislative changes, which will also be compliant to the requirements laid down under the International Covenant on Civil and Political Rights (ICCPR) for maintaining and preserving the constitutional and societal norms in the existing legal framework. Therefore, the matter is referred to the Government/Parliament for considering and making necessary amendments/legislation in the Pakistan Army Act, 1952, and allied Rules within a period of 45 days in order to provide an independent right of appeal in the High Court against the conviction awarded to the persons by the Court Martial/Military Courts under sub-clauses (i) & (ii) of Clause (d) of subsection (1) of Section 2 of the Pakistan Army Act, 1952, read with sub-section (4) of Section 59 of the Pakistan Army Act, 1952.

ix. Subject to clause (viii) of this Short Order, the limitation period for filing an appeal by the convicts against their conviction before the High Courts shall be reckoned and applied from the date of notifying the amendments under the Pakistan Army Act, 1952, and their conviction shall be subject to the final outcome/decision in appeal by the High Court.

x. All pending Civil Misc. Applications are also disposed of accordingly.

xi. It is clarified that the individual cases/writ petitions, if pending or filed in the High Courts for challenging the *vires* of orders passed by the Anti-Terrorism Courts, allowing the transfer of case/custody of any accused to the Military Court for trial, shall be decided by such Courts on its own merits.

xii. Office is directed to transmit the copy of this Short Order to the learned Attorney General, Secretary General National Assembly, Secretary Ministry of

Law & Justice, Secretary Ministry of Defence, and Secretary Law & Justice Commission, Government of Pakistan, for ensuring compliance.

Senior Judge

Judge

Judge

Judge

Judge

Islamabad, the
7th May, 2025
Approved for reporting

Order of the Court

By majority of 5 (comprising Justice Amin-ud-Din Khan, Justice Muhammad Ali Mazhar, Justice Syed Hasan Azhar Rizvi, Justice Musarrat Hilali, and Justice Shahid Bilal Hassan), the Intra Court Appeal No.5/2023 and other connected appeals are allowed and the impugned judgment, dated 23.10.2023, rendered by the learned Bench of this Court in Constitution Petition Nos.24, 25, 26, 27, 28 & 30 of 2023 is set aside. Whereas, Justice Jamal Khan Mandokhail and Justice Naeem Akhter Afghan dismissed the aforesaid Intra Court Appeals.

Senior Judge

Judge

Judge

Short order is appended

Judge

Judge

Judge

Judge

Short order is appended

Islamabad, the
7th May, 2025