

ORDER

Jamal Khan Mandokhail and Naeem Akhter Afghan JJ.- For the reasons to be recorded later on, we dismiss these appeals on the following grounds:

- (a) The Pakistan Army Act, 1952 (**'PAA'**) is a disciplinary statute, relates to members of the Armed Forces, for the purpose of ensuring the proper discharge of their duties or the maintenance of discipline amongst them, as provided by clause (a) of sub-Article (3) of Article 8 of the Constitution of the Islamic Republic of Pakistan, 1973 (**'Constitution'**), hence, does not offer fundamental rights to persons under the military discipline.
- (b) To the contrary, clause (d) added to subsection (1) of section 2 of the PAA relates to persons not otherwise subject to the PAA (**'Civilians'**). It does not relate to members of the Armed Forces, nor serves the aforesaid purpose, as provided by sub-clause (a) of sub-Article (3) of Article 8 of the Constitution, as such, it does not qualify for exemption from fundamental rights, hence, cannot be retained as part of the PAA.
- (c) Article 175 of the Constitution provides the establishment and jurisdiction of courts. It requires that in order to fully secure the independence of judiciary, it must be separated from executive in all respects. The courts martial comprising of executive, being outside the scope of Article 175(3) of the Constitution cannot prosecute the civilians.
- (d) The trial of civilians by courts martial offends the fundamental principle of independence of judiciary, fundamental rights of security of person, safeguard as to arrest and detention, fair trial and due process, right to information, equality of citizens and Injunctions of Islam, as guaranteed by Articles 2A, 9, 10, 10A, 19A, 25 and 227(1) of the Constitution, respectively.
- (e) Denial of right of appeal to civilians against the conviction and sentence by courts martial before an independent and impartial forum is also violative of fundamental right of fair trial and due process.
- (f) The trial of civilians by courts martial presided over by active military officers, is violative of the recognized covenants of the United Nations

Human Rights Commission ('UNHRC') as well as the International Covenant on Civil and Political Rights, 1966 ('ICCPR') and treaties, to which Pakistan is a signatory.

- (g) The trial of civilians by courts martial is in excess of the functions assigned to the Armed Forces by Article 245 of the Constitution.
2. The convictions and sentences awarded to civilians by the courts martial for the occurrence of 9th May, 2023, are declared to be without jurisdiction, hence, the same are set aside. They shall be dealt with as follows:
- (i) The accused under custody shall be treated as under-trial prisoners. Their cases stand transferred to the concerned courts of competent jurisdiction for trial. Upon receipt whereof, the concerned courts should proceed with their trials expeditiously and decide the same at the earliest, in accordance with law.
 - (ii) The persons who have completed/undergone their sentences or have been acquitted of the charge by the courts martial or Forum of Appeal under the PAA, shall have the effect of their discharge under section 169 of the Code of Criminal Procedure ('Cr.P.C.').

Judge

Judge

Islamabad
07.05.2025
K.Anees

APPROVED FOR REPORTING