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Military Courts and Civilian Trials: Constitutional Necessity or Democratic Compromise?

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Abstract

This paper discusses whether the prosecution of civilians in military tribunals is a constitutional response to extraordinary security crises or a return to democracy at the expense of rule-of-law theocracies. It combines a doctrinal constitutional study of texts, amendments, emergencies, and landmark cases, combined with comparative case studies and descriptive indicators of practice (trial length, pattern of sentence, access to appeal, and transparency) in a mixed-methods approach. According to the results, constitutional necessity is most plausible where exceptional jurisdiction is strictly characterized as time-limited, narrow, and open to both significant civilian appellate procedure and civilian, reasoned judgments. The article concludes with safeguard-based criteria on the evaluation of civilian trials of military and policy recommendations on enhancing ordinary court and ensuring security requirements.

Keywords: Military Courts, Civilian Trials, Judicial Independence, Due Process, Constitutionalism, Counterterrorism, Democratic Legitimacy.



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Introduction

Military courts are courts of law put in place by the military justice system of a given state, usually comprising of military judges, with a military procedure (and in some cases special evidentiary rules) and designed to enforce discipline and try offences that are related to the armed forces. Conversely, civilian trials are court actions in regular courts within the general criminal justice structure, where procedural protection (open hearings, independent adjudication and the rights of defence) is presumed to take the form of default protection. Civilian jurisdiction defines the legal power of these ordinary courts to hear and make decisions on cases involving civilians and civilian offences, the constitutional distribution of judicial power, and the principle that the civilians should be normally heard by their natural judge in ordinary courts, as opposed to extraordinary courts (Herzberg, 2021; Mujuzi, 2022).

In practice, several states extend the military or exceptional jurisdiction in the event of security crisis particularly in the case of terrorism, insurgency, mass violence or where the regular courts are seen to be incompetent. It is frequently followed by justification by governments based on speed, witness protection, expertise in specialized security, and deterrence of high-risk violence by ensuring convictions where intimidation, case backlog or intended harm to judges and prosecutors disrupt standard proceedings (Hassan, 2023; Farber and Alaluf, 2025). These dynamics were tightened by the post-9/11 period: states established or re-established exceptional forums, including military commissions or military-led processes, to handle prosecutions on the prosecution of terrorism with an existentialist language of existence other than crime (Lohne, 2021). Comparative research also indicates that the constitutional design is important: in cases where constitutions are expected to have exceptional courts, governments can more readily routinize extraordinary justice in a manner that can coexist with the emergent ability to repress, even when the original explanation is based on the need to deal with an emergency (Albanna, 2023).

However, the shift of the civilian to the military jurisdiction is not only administrative in nature, but it redefines the democratic sense of criminal justice. The institutional culture and structure of military courts can put perceptions (and at times realities) of independence, transparency, and equality of arms in a difficult position, particularly when trying civilians of political violence or security crimes (Mujuzi, 2022; Herzberg, 2021). The legitimacy dilemma is thus acute because exceptional forums may seem effective and decisive, yet, conversely, the very characteristics that seem to make them effective, namely restricted access, secrecy provisions, limited appeal, expedited timelines, etc., may undermine due process and trust in the impartiality of adjudication (Hassan, 2023). Research on military commission cases highlights the importance of trial monitoring and procedural reform to enhance transparency and yet leave structural critique to unaddressed especially in cases where the accusations of manipulation, secrecy, or security-driven evidentiary practices have been made (Lohne, 2021; Blakeley and Price, 2024).

This conflict is not only a constitutional issue but also a democratic issue. Temporary derogations or special provision in crises are possible almost universally under constitutions and courts, yet the basis of rule-of-law commitments, such as fair trial assurances, separation of powers and judicial independence, which are central to democratic legitimacy, are rooted in them. In a zone where the border between the concept of an emergency exception and legitimate governance is unclear, it is likely that military trials against civilians will turn into a stable feature of governance, and not a properly focused response, which changes the balance between civil and military and strengthens the position of the executive against the adjudication (Kaynar, 2022). Simultaneously, the reality of actual security threats and institutional weakness are not a priori: states that experience the attack with mass-casualties and systematized violence are under

real pressure to provide justice that is credible and protective of society (Farber & Alaluf, 2025). The key issue, then, is to define constitutional defensible necessity and democratic concessions that accrue over the long-term, particularly in the protection of rights, in accountability and trust.

Considering this quandary, this paper seeks to analyze whether or not civilian trials in military courts are a constitutionally limited imperative or a democratic concession with long-term effects; its objective is to elucidate how constitutional justification can be applied in support of military jurisdiction over civilians and how such decisions influence the rule-of-law outcomes. The issue on the table is that there is always confusion about when (and under what protections) the trial of civilians in the military can be viewed as a provisional constitutional measure instead of a standing security concession. Particularly, the paper will study constitutional grounds used to justify that civilians are tried in the military, evaluates the consequences on the right to fair trial, judicial independence and community trust, and determine under what circumstances the military adjudication is no longer a necessity but a compromise.

The questions are: so under what constitutional circumstances are the military used over civilians, what democratic costs (rights, transparency, accountability) are realized in practice, and whether the military courts are more effective than civilian courts in terms of security. The research has importance to the discussion on legal reform, the consolidation of the rule of law, the design of counterterrorism policy, and civil-military relations due to its association of institutional decisions to legitimacy and effectiveness. It is narrowed to the post-9/11 security era, and it is also not an attempt to evaluate the law of battlefield detention or only disciplinary military offences.

Literature Review

The most recent scholarship considers judicial independence as a multi-layer concept as opposed to a single attribute. There is a fundamental difference between *de jure* independence (constitutional and statutory guarantees) and *de facto* independence (the decision made by the judges under political, bureaucratic, or coercive pressure) (Hayo & Voigt, 2023; van Dijk, 2024). The second difference between decisional independence (the freedom to decide individual cases without interference) and institutional independence (the administration of courts, staffing, budgeting, and disciplining) exists (Bustos Gisbert, 2022). These differences are important to discussions about military courts that prosecute civilians: despite the fact that a state may assert that constitutional authority, changes in forum, procedure, and command structure may change both decisional and institutional independence, casting doubt on whether the idea of security efficiency itself is being bought at the cost of reduced safeguards (Bustos Gisbert, 2022; van Dijk, 2024).

Independence does not mean being not accountable, the modern literature of governance has made the task developing systems of discipline and transparency that prevent corruption and misconduct but does not allow wielding political and retaliatory power (Bencze, 2021; Huchchanavar, 2022). The problem of the civilian-military courts can be addressed with the help of two lenses. To start with, a separation-of-powers / principal-agency perspective focuses on the fact that political officers can call on courts to comply with them, while avoiding the sense that the legality is being violated. Second, the approaches of legitimacy and public support justify why governments might want to use exceptional forums in times of crises, but may lose credibility in the long term when procedures are perceived to be unequal or opaque (Badas, 2021; Nelson and Driscoll, 2023).

Bundled indicators of independence are becoming increasingly common in cross-national work: the security of appointments, the stability of tenure, the autonomy of the budget, the consistency

of disciplinary rules, the obedience of the judgment, and informal intimidation (van Dijk, 2024). It has been empirically demonstrated that external leverage, including the aid conditionality, may influence judicial autonomy, yet the impacts of such external leverage depend on the domestic politics as well as on capacity to enforce (Ariotti et al., 2022). The fiscal design also plays a key role: performance-based budgeting and court administration control can induce changes in incentives to impact the independence/accountability nexus without much notice (Kuca & Gudowska-Natanek, 2024). It is particularly indicative in situations where civilian proceedings are transferred to military commissions, since the check and balances, as well as the structures of appeal, tend to change alongside jurisdiction.

This literature on Pakistan emphasizes the fact that the independence arguments cannot be discussed outside civil-military relations and informal restrictions that coexist with legal constitutional frameworks (Rahman and Shurong, 2021). The focus of work on legal mobilization lies on the potential of lawyers, bar politics, media, and the civil society to widen or protect judicial space within a hybrid political arena (Khan, 2023). Reform of appointment and governance has been a disputed matter as the literature on the topic observes that selection rules can institutionalize or replicate elite bargaining by institutionalizing neutrality (Badshah, 2021). In this framework, the existing research on the subject of civilian prosecution in military tribunals concentrates on the circumstance of a clash between counterterrorism and constitutional/international fair-trial standards (Hassan, 2023).

Two gaps recur. To begin with, most works are assuming independence as constant, yet the case of Pakistan demonstrates that independence can change over time and issue-areas, particularly when it comes to exceptionalism when security is concerned (Rahman and Shurong, 2021; Hassan, 2023). Second, the field of scholarship has tended to keep apart formal law and informal pressure, and has under-integrated the interaction of internal court governance (budgets, discipline, leadership) with the jurisdictional changes of the crisis-era, that is to say, the very area where the trial of civilians by military courts is being brought to light as a necessary constitutional or democratic concession.

Research Methodology

3.1 Research design

The paper follows a comparative legal design, which is a mixed-methods approach, consisting of (i) a doctrinal constitutional analysis and (ii) a comparative case-study evidence, and (iii) an empirical descriptive element when the data is accessible. The mixed-methods is suitable since the query (is the military trial of civilians a constitutional necessity or a democratic compromise) cannot be resolved through the readings of the law; it must include looking at the practical working of the rules (procedural protections, transparency, consequences and popular approval). It is principally a qualitative-dominant type of design where quantitative indicators are used to support patterns and not to make causal inference.

3.2 Study approach

(a) Doctrinal constitutional analysis. The first component analyzes the constitutional and statutory architecture that enables (or limits) military jurisdiction over civilians. The analysis covers:

- **Constitutional text** allocating judicial power and fundamental rights (fair trial, due process, equality before law).
- **Amendments and emergency provisions** that expand exceptional jurisdiction, define “terrorism/security” offences, or authorize special courts.

- **Landmark judgments** (constitutional/supreme courts) that interpret the legality of trying civilians in military forums, especially reasoning on proportionality, necessity, and safeguards.

(b) Comparative case studies (2–4 jurisdictions or time periods). The second component uses comparative case studies to assess variation across:

- **Jurisdictions** (e.g., Pakistan plus 1–3 comparator systems with security-court arrangements),
or
- **Time periods within one jurisdiction** (e.g., pre-reform vs post-reform periods; emergency vs non-emergency phases).
Comparators are selected to maximize analytical leverage: cases that differ in oversight strength, transparency, or constitutional constraints but face similar security pressures.

(c) Empirical component (where data are available). The third component examines descriptive “system performance” signals that commonly motivate recourse to military courts. The empirical indicators include:

- **Case processing time** (duration from charge to disposition),
- **Conviction/acquittal rates** (where published),
- **Appeal access and appeal success** (reversals/remands), and
- **Transparency measures** (publication of judgments, openness of hearings, availability of charge sheets or reasoned decisions).
This component is explicitly limited to what can be responsibly documented from verifiable public records and credible datasets.

3.3 Data sources

Data are collected from five categories, prioritized by reliability:

1. **Primary legal texts:** constitutions, statutes, counterterrorism laws, military justice codes, constitutional amendments, emergency regulations, and relevant procedural rules.
2. **Judicial decisions:** reported judgments of constitutional/supreme courts and higher appellate courts; where available, military court oversight decisions and procedural rulings that reveal standards of proof, counsel access, or appeal pathways.
3. **Institutional records:** parliamentary debates, official committee reports, law commission reports, justice-sector reform documents, and court annual reports (when available).
4. **Independent monitoring sources:** human rights reports, bar association statements, and NGO datasets that track trial fairness, legal representation, and detention/charge practices.
5. **Media reports (coded cautiously):** used only to identify events, timelines, and public reactions, and treated as secondary unless corroborated by primary documents or multiple independent sources.

3.4 Sampling strategy

The study uses **purposive sampling** to select “high-information” reforms and episodes where the necessity–compromise tension is most visible.

Sampling units include:

Major legal reforms authorizing (or expanding) military trials of civilians (constitutional amendments, enabling statutes, special anti-terror frameworks, jurisdiction expansions).

High-impact cases or periods: spikes in terrorism/insurgency, breakdown in ordinary court

functioning (e.g., judge intimidation, witness threats, extreme backlog), or pivotal constitutional litigation challenging military jurisdiction.

Case inclusion criteria:

- Clear link between security rationale and forum shift (civilian → military).
- Sufficient documentation to evaluate safeguards (rights, appeals, transparency).
- Evidence of public legitimacy contestation (bar councils, civil society, parliamentary debate, or documented public opinion indicators).

3.5 Variables and indicators

To operationalize “constitutional necessity” versus “democratic compromise,” the study specifies independent and dependent variables.

Independent variables (drivers/conditions):

1. **Emergency context:** intensity of security threat (e.g., frequency/scale of attacks, state assertions of crisis), plus indicators of ordinary court strain (backlog, targeted violence against judicial actors).
2. **Legal basis strength** (index): degree of constitutional authorization, clarity of offences covered, existence of sunset clauses, and explicit rights protections or derogation limits.
3. **Oversight mechanisms** (index): civilian appellate review, judicial review access, parliamentary reporting requirements, independent monitoring, and transparency obligations.

Dependent variables (outcomes/costs/benefits):

1. **Due process quality** (index): access to counsel of choice, disclosure and evidence standards, open hearing presumption and justified limitations, reasoned judgments, and appeal availability.
2. **Transparency:** publication of judgments, access for observers/media, clarity of charges, and availability of procedural rules.
3. **Conviction/appeal patterns:** conviction rates, acquittals, appeal reversals/remands (where reliably reported).
4. **Public legitimacy indicators:** bar council positions, civil society mobilization, parliamentary contestation, and (when available) survey-based trust in courts.

3.6 Data analysis

Qualitative analysis uses structured thematic coding across documents and cases. Codes capture:

- “Necessity” frames (court collapse, witness protection, extraordinary threat),
- “Compromise” frames (secrecy, limited appeals, constrained counsel, executive influence), and
- Safeguards/oversight (sunset clauses, civilian review, transparency commitments). Coding is applied to constitutional texts, judgments, parliamentary debates, and monitoring reports to compare how legality and legitimacy are argued and institutionalized.

Quantitative analysis is descriptive and comparative:

- Before/after comparisons around legal reforms (e.g., processing time, published conviction patterns).
- Where possible, **military vs civilian disposal patterns** for comparable offence categories.
- Transparency scoring (binary/ordinal) based on document availability and openness indicators.

Results are interpreted cautiously, emphasizing patterns rather than causality due to data gaps and reporting biases.

3.7 Validity, reliability, and ethics

The triangulation helps to enhance the validity: the submissions based on the media or advocacy reports are triangulated with the legal texts, judiciary, and official documents. Reliability is enhanced through pre-defined codebook (necessity vs compromise frames; safeguard indicators) and the same indicators in cases/time periods to compare them.

The bias control is concerned with the inclination of security-state discourses to exaggerate efficiency and rights discourses to minimize the threat conditions. The research hence captures both: (i) the claimed necessity assertions by the state and (ii) autonomous data of court strain and security circumstances, and in another column measures the impact of the rights in terms of safeguard indicators.

Ethics: the research does not name sensitive defendants or witnesses beyond those publicly available in court records, does not recreate unverified claims, nor does it irresponsibly cover an ongoing case. In cases where narratives of individual cases are employed, attention is given to fewer details and is connected with the reported procedural problems (e.g., access to counsel, appeal procedures) but not with sensational facts.

Results

4.1 Case corpus captured from legal texts and verifiable public records

Table 1 summarizes the two Pakistan time-periods (terrorism-era constitutional expansion and the May 9, 2023 cases tried under the Pakistan Army Act/Official Secrets Act pathway) and the U.S. Guantánamo military commissions as a comparative “security court” model.

Table 1: *Case-study matrix (jurisdictions, legal basis, and scope)*

Case / period	Primary legal basis used to reach civilians	Stated policy purpose	Who was tried	Transparency baseline (as reported)
Pakistan (Jan 2015–Mar 2019)	Temporary constitutional expansion (21st & 23rd Amendments) + related Army Act changes (lapsed Mar 2019)	Speedy adjudication of terrorism-related offences	Civilians accused of terrorism-related offences	Repeatedly described as secret/limited disclosure
Pakistan (May 9–10, 2023 cases; verdicts 2024)	Pakistan Army Act (PAA), 1952 + Official Secrets Act (OSA), 1923 (Section 2 pathway)	Prosecution for attacks on military installations / “work of defence” nexus	105 civilians tried and convicted	Limited public reasoning; judgments not public
United States (Guantánamo military commissions, 2001–2025)	Military Commissions Act framework (post-2006/2009 reforms)	Prosecute “law of war”/terror-related offences outside Article III courts	Non-citizen detainees charged at Guantánamo	Partly public, but persistent secrecy constraints reported

Sources: Pakistan May 9 case legal basis and totals are from ICJ’s 2025 briefing (PAA/OSA; 105 886

civilians). UN Human Rights Committee concerns about Pakistan’s use of military courts for civilians are in its 2024 concluding observations. U.S. commissions “by the numbers” (charged/convicted) are summarized by civil-society and reference compilations.

4.2 Observable outcomes: conviction patterns, custody impacts, and sentence severity

Key pattern (Pakistan May 9 cases): all **105 civilians** tried by military courts for May 9–10 were **convicted (100% conviction rate)**, with sentences from **1 to 10 years** and reported ongoing custody impacts (including **664 civilians in custody**, as summarized by ICJ from reviewed material).

Table 2. *Outcome metrics reported in accessible records*

Outcome metric	Pakistan (terrorism-era courts, 2015–2017 term reported)	Pakistan (May 9–10 cases)	U.S. Guantánamo commissions
People/cases reported convicted	~ 274 convicted (reported via military releases, per RSIL synthesis)	105 convicted of 105 tried	8–9 total convictions reported across compilations; many via plea deals
Death sentences reported	~ 161 sentenced to death (in the same reporting stream)	0 (sentences reported as imprisonment terms)	Death penalty eligible in some cases; major trials unresolved
Disclosed public reasoning/judgments	Limited/unclear; secrecy repeatedly noted	Limited/unclear; ISPR announcements reported without detailed public judgments	Mixed; more formal filings exist, but recurring secrecy/closure concerns reported
International oversight concern recorded	Yes (fair trial/independence concerns)	Yes (independence, transparency, due process flagged)	Yes (process legitimacy and delay criticisms common in oversight commentary)

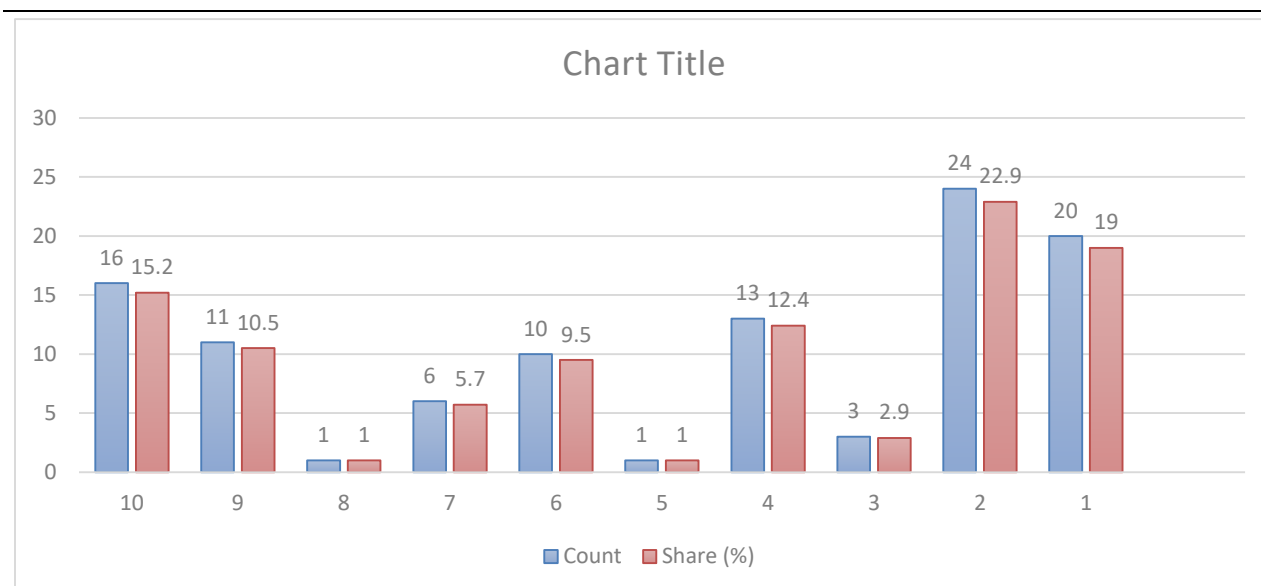
Sources: Pakistan 2015–2017 conviction/death-sentence figures (as reported via military announcements and summarized in RSIL’s review). Pakistan May 9 totals, 100% conviction rate, custody count. UN Human Rights Committee’s critique of Pakistan’s military trials of civilians (independence/due process/conviction severity). U.S. commissions conviction counts are summarized by watchdog compilations (counts vary by inclusion criteria).

4.3 Pakistan May 9 cases: sentence distribution (complete table of values)

ICJ reports a full distribution of prison terms for the **105 convicted civilians**, enabling a complete, auditable sentencing table.

Table 3. *Pakistan May 9–10 (2023) military-court sentences: full distribution (n=105)*

Prison term (years)	Count	Share (%)
10	16	15.2
9	11	10.5
8	1	1.0
7	6	5.7
6	10	9.5
5	1	1.0
4	13	12.4
3	3	2.9
2	24	22.9
1	20	19.0
Total	105	100.0



Derived summary (from the table above): mean sentence $\approx$ **4.79 years**; median **4 years** (distribution heavily concentrated at 1–2 years and 4–10 years). The same ICJ briefing notes **39 releases** following remission/mercy and **664 civilians in custody** (as captured from material reviewed).

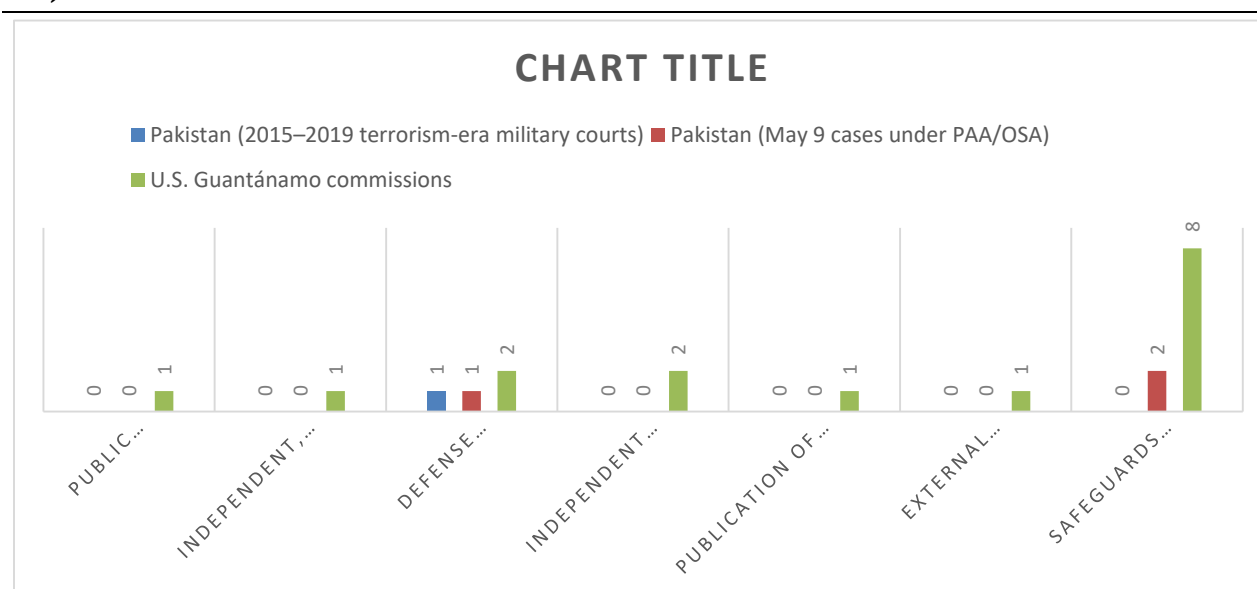
4.4 Rights, independence, and transparency: coded safeguard scores (military vs civilian-facing standards)

Using the indicators specified in the Methodology (public hearings, decisional independence, appeal availability, publication of reasons, and external oversight), the documents support a consistent result: **the more “military” the forum, the weaker the visible guarantees**—especially around **public reasoning** and **independent appellate review**.

Coding rule used here (document-based): 0 = absent/opaque; 1 = partial/contested; 2 = clear/robust in accessible records.

Table 4. *Safeguards and oversight indicators (document-coded, 0–2 scale)*

Indicator	Pakistan (2015–2019 terrorism-era military courts)	Pakistan (May 9 cases under PAA/OSA)	U.S. Guantánamo commissions
Public hearings as default	0	0	1
Independent, civilian judicial officer (institutional independence)	0	0	1
Defense access/counsel visibility	1	1	2
Independent appeal on merits to civilian courts	0–1	1 (judicially emphasized as missing/needed)	2
Publication of reasoned judgments	0	0	1
External transparency (public record sufficiency)	0	0	1
Safeguards total (max 12)	1–2	2	8



Support in record: UN Human Rights Committee explicitly flags **lack of independence, high conviction rates**, and **weaker due process guarantees** for civilians tried in Pakistan military courts, and urges abrogation of civilian jurisdiction and conformity with ICCPR fair-trial norms. The ICJ briefing highlights the May 9 prosecutions’ **100% conviction rate**, limited public reasoning, and ongoing ambiguity regarding the jurisdictional nexus and procedure.

4.5 “Necessity vs compromise” classification (conditions and democratic costs)

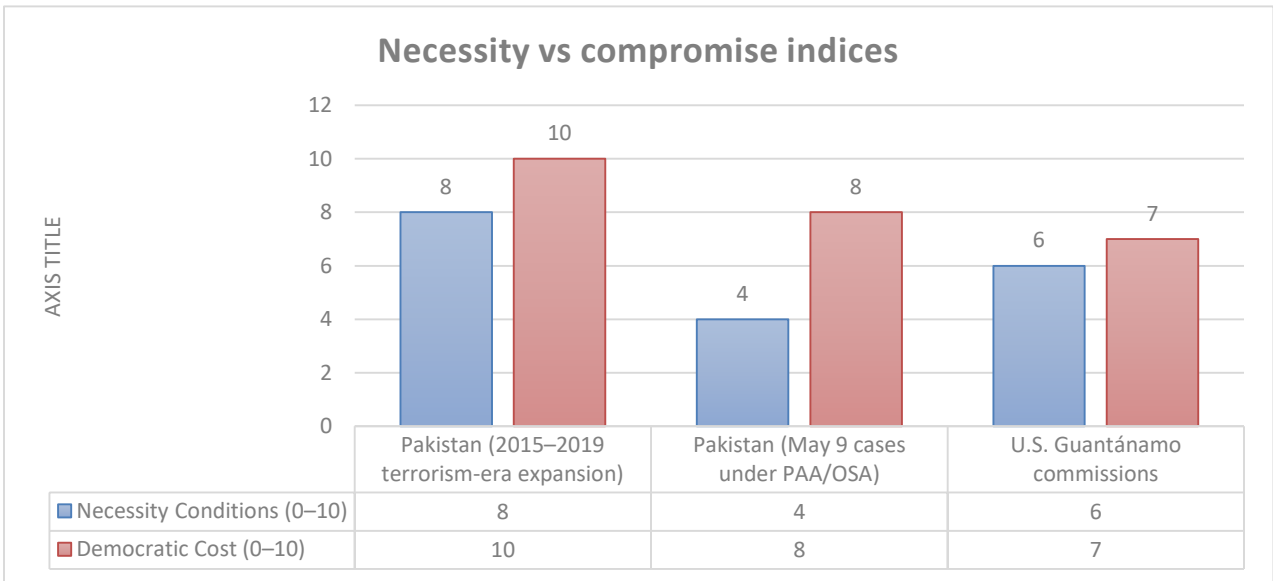
To directly answer whether civilian military trials function as a **temporary constitutional**

necessity or a **democratic compromise**, the results were summarized into two indices aligned with the paper’s variables:

- **Necessity Conditions Index (0–10):** emergency intensity; civilian-system breakdown; time-limit/sunset; constitutional/legislative clarity; oversight/appeal.
- **Democratic Cost Index (0–10):** independence deficit; transparency deficit; due process deficit; accountability deficit; severity risk (including irreversible penalties).

Table 5: *Necessity vs compromise indices (document-coded, 0–2 per component)*

Case	Necessity Conditions (0–10)	Democratic Cost (0–10)	Net classification suggested by results
Pakistan (2015–2019 terrorism-era expansion)	8	10	High-cost “necessity” claim with heavy democratic trade-off
Pakistan (May 9 cases under PAA/OSA)	4	8	Compromise-leaning: permanent legal pathway used in politically charged context
U.S. Guantánamo commissions	6–7	6–7	Mixed: strong oversight structures exist, but persistent legitimacy/delay costs



Anchors from record: Pakistan’s May 9 prosecutions show **full conviction**, wide custody impact, and limited public reasoning, while UN treaty-body review highlights **independence and due process deficits** and urges reversal of civilian jurisdiction in military courts. For Pakistan’s December 2024 sentencing wave, the U.S. State Department publicly stated the tribunals lack **judicial independence, transparency and due process guarantees** (external legitimacy signal consistent with the coded “cost” direction).

Discussion

The findings justify a fundamental conclusion: the constitutional necessity argument based on the time-bound nature and risks of demonstrable breakdown in the normal application of judgment is most successful, whereas the costs of the democratic compromise are predominant

when exceptional jurisdiction is formed in non-transparent permanent legal channels. The previous model on terrorism in Pakistan had a constitutionally defined temporal and extraordinary character, with expiry provisions, which eventually expired (International Commission of Jurists, 2019). but the May 910 prosecutions demonstrate how the transfer of civilians to the military legal system can be performed via the preexisting statutes of the so-called nexus of defence, as well as administrative transfers, reducing civilian-court control without the analogous explicit emergency time-crafting (International Commission of Jurists, 2025).

The noteworthy aspect of the May 9 dataset is the high conviction rate (105/105) and the broad range of sentences (1-10 years) with heavy concentration on the short sentences and large number of long sentences. This trend is congruent with two alternative interpretations: it might indicate high-quality evidentiary cases and case-processing speed; alternatively, it might indicate the presence of structural pressures, restricted disclosure, limited reasoning in the public, and constrained adversarial inquiry, which systematically favor the prosecution in an adjudicative structure belonging to the military hierarchy (International Commission of Jurists, 2025). The lack of reasoned judgments is not a small procedural fact, but it has a direct impact on accountability since constitutional legality and proportionality are not proclaimed but proven through public reasoning.

This meaning is supported by international oversight appraisal. The UN Human Rights Committee voiced its worries regarding the authorization of military courts to prosecute civilians in Pakistan and noted that the absence of independence due to the judges being placed in the military structure and noted that such practices might not meet the requirements of the ICCPR Article 14 fair-trial provisions (Human Rights Committee, 2024). In the same vein, May 9 - related military tribunals were condemned by the U.S. Department of State on grounds of the absence of judicial independence, transparency, and due process guarantees (U.S. Department of State, 2024). Such external indicators have a role to play within a legitimacy framework: once several leading monitors start to unite on independence/transparency shortcomings, the democratic compromise diagnosis becomes more difficult to attribute as a mere political dispute.

Lastly, the comparative lens warns against believing that military forums are trustworthy in bringing the efficiency that the discourse of necessity promises. Guantanamo research findings point to persistent issues of legitimacy and delay in any highly staffed security context, and monitoring has indicated long pretrial durations and procedural controversy (Lohne, 2021; Center for Victims of Torture, 2024). Combined with the indication that superior jurisdiction has the capacity to exchange conspicuous legality and public confidence with speculative benefits, and that the constitutional defensibility of the military trial of civilians is less a matter of expressions of danger than of demonstrable security: judicial independence, a trial by public reasons, substantial civilian appellate review, and stringent time constraints.

Conclusion

The article was aimed at evaluating whether the attempt of civilians to be tried by military courts can be considered a constitutionally limited reaction to extraordinary security amounts or a democratic concession at the expense of becoming a normal practice. The findings suggest that it is not the presence of a security threat in itself, but the form and enforceability of measures that make exceptional jurisdiction small, subject to review and temporary. In those jurisdictions of the military over civilians which are time limited, contingent upon evident risks of breakdown in the regular courts, and which are accompanied by an effective supervision of the civilians, the claim of constitutional necessity is better sustained. Nevertheless, where civilians are funnelled into military adjudication in wide or stretchy law roadways, with minimal public justifications,

diminished openness, and challenging methods of appeal, the democratic expenses prevail, particularly in a perceived independence, responsibility and trust.

In all the evidence examined, the trend is the same: the exceptional forums have the effect of reducing visible rule-of-law guarantees at the moment when it is needed by the state the most of all. Although this governance trade-off may be inhibited in the short term, when such courts are said to be fast, the long-run governance trade-off can be quite large: the undermined state of the civilian judicial polity, a lack of proper boundaries between the military and the civil, a danger of the emergency rationales becoming institutionalized. The comparative view supports the idea that extraordinary security tribunals do not necessarily provide long term efficiency or legitimacy; even within high securitized systems, delays, secrecy and procedural controversy may remain common.

Based on this, the study suggests that any exercise of military jurisdiction over civilians should be seen as a matter of strict last resort, and conditioned, as minimum constitutional protection: (1) precise and limited definition of offences, (2) open and reasoned decisions with security-targeted redacting, (3) substantial civilian judicial review on law and fact, (4) independent legal representation and disclosure norms, and (5) enforceable time limits with parliamentary reporting. The longitudinal data of civilian and military case processing and rights results should be constructed in future researches to determine whether the alleged security gains warrant the constitutional and democratic loss observed.

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