



RESOLUTION NO. 556

"Resonating the concerns and sentiments expressed by various stock holders in particular and public in general, regarding the recent judgment of the Supreme Court that the declared section to (D)(1) & 59(4) of the army act unconstitutional ;

Taking exception to overriding an Act of Parliament, which was well within the previous and existing scheme of constitutional and legislative framework and duly enacted under the legislative competence of the Parliament. *Prima facie* an attempt has been made to rewrite the law by impinging upon the legislative authority of the Parliament;

Reiterating that the trial of those accused of violence against the armed forces under Army Act is an appropriate and proportional response in line with Pakistan's constitutional framework and statutory regime. Within the country's constitutional framework, the trial of individual accused of anti-state vandalism and violence under the Army Act serves as a deterrent against such acts;

Firmly standing with the families of martyrs, who have made significant sacrifices for the country, and have expressed feelings of insecurity and treachery due to this decision. Their concern that absence of military court trial is likely to encourage or embolden those responsible for acts of terrorism due to lack of stringent justice in regular courts, is fully endorsed;

Noting with concern that judgment annuls the sacrifices made by martyrs of the Armed Forces, civilians and Law Enforcement Agencies in combating terrorism. Military courts have played a significant role in addressing terrorism by ensuring that those responsible for terrorist acts are brought to justice. However, this judgment while abandoning the spirit of martyrdom, grants lenient option to terrorists, anti-state actors, foreign agents and spies to be tried in normal courts.

Dismayed that the apex Court has not taken into consideration the existing procedures which make it abundantly clear that the sentences given by Military Courts are not arbitrary and are conducted following due process and formalities. While interpreting a certain provision the overall scheme that the certainty of well deserved & warranted punishment, rather than its severity, is a crucial deterrent, has been missed. The existence of an appeal process against the Military Court orders, which involves appeal avenues with the Chief of Army Staff and the President, as well as the option to file writ petitions in High Courts that may eventually reach the Supreme Court, has been overlooked. The provisions of the Army Act and underlying procedures ensure that the right to a fair trial under Article 10-A of the Constitution is not violated;

-:2:-

Reaffirming that 9th of May will be remembered as a dark day in the history of the country and condemns the anti-state acts committed against the Armed forces, which the enemies of Pakistan cannot even dare to think of committing. The culprits of 9th May, who blatantly attacked Defence installations and disgracefully dismantled memorials of martyrs, deserve no empathy or leniency rather they should be tried in Military Courts and stringent punishments be given to make them an example for internal and external enemies to Pakistan by creating a deterrence and upholding the supremacy of State;

Recalling that amendment to the Army Act, specifically the addition of Section 2(1)(d), allowing for the trial of civilians who commit offenses like attacking military installations by military courts was carried in 1967. Civilians have been tried in military courts in the past under this provision, and sentences have also been duly carried out. More so, the previous decisions of the Apex Court have upheld trials under the Army Act by a majority. The Bench which announced the recent judgment was not in unanimity as opposed to the previous benches which upheld trials of civilians under the Army Act, hence the decision is legally flawed and should not be implemented unless it is considered by a larger bench;

Observing with apprehension that the invalidation of jurisdiction of army courts is likely to facilitate vandals and abettors of terrorism and anti-state activities. Military courts have played a pivotal role in delivering justice, particularly concerning acts of terrorism, often instigated by neighboring adversaries within Pakistan's borders;

The Senate of Pakistan calls upon the apex court to reconsider its decision, urging alignment with the national security paradigm and sacrifices of the martyrs in order to address the concerns raised regarding the ramifications of the judgment on the security and stability of the nation.

Moved by Senator Dilawar Khan on his behalf and on behalf of Senators Kauda Babar, Ahmed Khan, Naseebullah Bazai, Prince Ahmed Omer Ahmedzai and Manzoor Ahmed. Passed by the Senate of Pakistan Islamabad, Monday the 13th November, 2023.