

## The Impact of Abusive Constitutionalism on Democracy in Pakistan

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### Abstract

*This research concerns the constitutional development in Pakistan with a specific reference to 21st Amendment to the Constitution of Pakistan. It is widely perceived among scholarly and semi-scholarly circles that the tendency of military's direct intervention in politics; toppling democratically elected government has been declined for the last many decades across the world. According to the new trends, military interferes in the state affairs through indirect means. One of the indirect means includes abusive constitutionalism that involves constitutional amendment and constitutional replacement as mechanisms for constitutional change. The paper explores whether 21st Amendment to Constitution of Pakistan was an abusive constitutionalism that really empowered military to get a strong hold on key policy making areas of national interest during the democratic rule. The research concludes that the 21st Amendment was an 'abusive constitutionalism' as it curtailed civil liberties and fundamental rights of the citizens and hence undermined democracy in Pakistan.*

**Key Words:** Pakistan, 21st Amendment, Abusive constitutionalism, Democracy, Civil liberties.

### Introduction

Joshua Kurlantzick (2011) and Valery Besong (2005) discuss that during the cold war era, coups had been frequent means of changing government in the developing countries, particularly in Latin America (Chile, Brazil, Argentina and Bolivia), Africa (Nigeria, Sudan and Kenya) and Asia (Bangladesh and Pakistan). It has been observed that since the end of the cold, war coups have been seen somewhat less frequent. However, it cannot be claimed that coup as a practice of taking over governments has been notably declined. According to a study, even in the last decade, the military took over power directly in several Asian, African and Latin American states including Niger, Mauritania, Bangladesh, Fiji, Guinea-Bissau, and Madagascar, among others. Moreover, there are some states such as Ecuador, Pakistan and Mexico, where in the same time period military without grabbing power, succeeded in retaining its status as the central decision making authority in the political issues vital for the national interests which turned these states into illiberal democratic states. It has been observed that in some states military have retained a strong hold on key policy making areas, through abusive constitutionalism instead of direct methods of undermining democratic governments. David [Landau \(2013\)](#) defines abusive constitutionalism as "the use of mechanisms of constitutional change in order to make a state significantly less democratic than it was before" (195). For him, abusive constitutionalism involves constitutional amendment and constitutional

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replacement as mechanisms for constitutional change. In some states abusive constitutionalism is used as means of empowering specific institutions (Landu, 2012) particularly military, which also leads. undermining of democracy. In those states mostly the military shift its past strategies of direct taking over of the government to indirect control in policy making areas ([Deborah, 1994](#); Feaver, 2003) which leads to undermining of civilian rule and in fact democracy ([Grare, 2016](#); [Kohn, 1997](#)).

For [Dixon and Landau \(2015\)](#) abusive constitutional developments undermine constitutional democracy or the entire constitutional system “based on free and fair elections and respect for the rule of law and basic human rights and hence is contrary to international law.” Despite the fact that international law provides frame work of liberal democracy, the scholars have pointed out that historically the matters such as forms of government were considered as matters related to internal governance and hence were beyond the scope of international law (See, e.g., [Franck, 1992](#), 46-91). However, for the last several decades, scholars such as Fox & Nolte (2000) and [Franck \(1992\)](#) have asserted that international law is no longer neutral on the. human right to democracy. In the light of the analysis of a number of global and regional treaties, and UN General Assembly’s Declarations, the aforementioned scholars have drawn conclusion that forms of government has gone beyond the national constitutional law to international human rights law. For instance, Organization of American States (OAS), Conference on Security and Cooperation in Europe (CSCE), Organization of African Unity (OAU), and Commonwealth of Nations in their “democracy clause” state that incase of transition from democratic to undemocratic regime, the state will be “punished by the international actors of the region”. However, not all undemocratic regimes are punished. In fact one of the reasons is some undemocratic regimes use abusive constitutionalism to achieve political interests and it adopts means that are either “constitutional or ambiguously constitutional.” In these conditions, it becomes even difficult for the democracy clauses of the international law and regional treaties to detect abusive constitutionalism. In short, international law and regional treaties just punish traditional military coups and other such means breaching democracy ([Wobig, 2015](#); Youngs 2012; [Heine and Weiffen 2015](#)). However, use of abusive constitutionalism for undermining democracy remains largely undetectable for the international law. In fact, the well-articulated abusive constitutionalism is quite deceptive, as it does not appear to be different from the liberal democratic constitution (For instance, Honduras case; see detail in [Feldman, et al., 2011](#)). Nonetheless, a close up shows that such type of refiguring of constitution largely aims to curtail democracy. In fact, abusive constitutionalism leads the state to illiberal democracy which appears like democracy with elections, parties, judiciary etc. but does not act like liberal democracies with regard to its interaction with the citizens ([Zakaria, 1997](#)). Broadly speaking, liberal democracy is conditional in its nature. The principle of the rule of law is central to it. “Rule of law includes supremacy of constitution, equality before the law and civil liberties” ([Khalid, 2012](#)). These broader aspects of democracy depict that abusive constitutionalism undermining democracy does not always aim to weaken or strengthen elected or unelected governments rather it is also used for curtailing the civil liberties which are central to democracy. In the post-9/11 era, abusive constitutionalism curtailing civil liberties and violating fundamental rights have been rigorously practiced as a security policy all across the world including Pakistan. For instance, in the West and the US, a series of legal and constitutional developments got a legal cover under counter terrorism strategy (“In the Name of Security,” 2012). In the same context 21<sup>st</sup> Amendment to Constitution of Pakistan was passed by the Legislative Assembly which aimed providing direction to the security policy of the state.

In the light of the above discussion, this paper explores; firstly, whether in Pakistan military was undermining democracy by dominating over key policy making areas of the state during civilian rule; secondly, whether 21<sup>st</sup> Amendment to Constitution of Pakistan really fell under abusive constitutionalism curtailing civil liberties that are central to democracy.

Croissant, Kuehn and Lorenz (2012) have pointed out five areas of policy making to analyze degree of perfection of a civilian rule in state affairs. These five areas include; elite recruitment, internal security,

public policy, military organization and national defense. If civilian government enjoys full control over decision making in these five areas, then an ideal civilian rule is established and if military exercises more power in the above-mentioned spheres, then an ideal military rule exists. If none of them have complete influence over all the above mentioned areas, then a hybrid regime having features of democracy as well as autocracy exists. In order to analyze whether military was dominant over civilian rule in policy making areas, the study will use the above mentioned theoretical underpinnings framed by [Croissant, Kuehn and Lorenz \(2012\)](#).

The remainder of the paper is organized as follows; Section two of the paper discusses background of the 21<sup>st</sup> Amendment to the Constitution of Pakistan. Section three of the paper makes an appraisal of the military and civilian rule's influence over state policy making areas pointed out by [Croissant, Kuehn and Lorenz](#). Section four critically evaluates the content of the 21<sup>st</sup> Amendment. The last section concludes the study.

### **Background of the 21<sup>st</sup> Amendment to the Constitution of Pakistan**

The terrorists attack on the Army Public School killing 132 children on 16/12 jolted the entire Pakistani nation. The Prime Minister while addressing to the nation said that the tragic incident had drawn a line between "coward terrorists and Pakistani nation." According to him, "on one side are the coward terrorists and on the other side stands the Pakistani nation" ([Manan, 2014](#)). Apparently, the incident served a turning point to bridge the division existed on counter terrorism policies within the state on different levels; between the government and military, among the political parties and/or between the government and civil society. In All Parties Conference approved 20 points of the National Action Plan (on December 24, 2014) to eliminate terrorism which paved the way for unanimous passage of the 21<sup>st</sup> Constitutional Amendment ([Manan, 2015](#)).

In a series of development, both houses of the parliament passed the 21<sup>st</sup> Amendment to Constitution on January 7, 2015, to provide a legal cover to the establishment of military courts for trials of terrorists besides giving some extra judicial powers to military. "The Act also amended Article 175 of the Constitution, which then led to further amendments to the first schedule of the Constitution i.e. clause XXXV of The Pakistan Navy Ordinance 1961, XXXIX of The Pakistan Army Act 1952, X of The Protection of Pakistan Act 2014 and VI of The Pakistan Air Force Act 1953" ("Parliament Passes 21<sup>st</sup> Constitutional Amendment," 2015).

All parliamentary parties except Jamiat-Ulema-e-Pakistan and Jamat-i-Islami voted in favour of the Amendment in the Legislative Assembly. The leader of the opposition said on that occasion;

"The Parliament is going to vote to save Pakistan. The bitter pill of this new law is being swallowed for the security of Pakistan" ("Parliament Passes 21<sup>st</sup> Constitutional Amendment," 2015).

Human right activists, judges and several religious parties criticized the content of the 21<sup>st</sup> Amendment to the Constitution of Pakistan. The Amendment was also challenged by some lawyers' groups, the Supreme Court and Lahore High Court Bars Association, arguing, the military courts violated basic human rights and were the expression of no-confidence on prevailing judiciary ("SC Upholds Military Courts," 2015).

The Court gave Stay Order over the petition filed against the military courts for some months but military courts were allowed to function in August 2015 ("SC Upholds Military Courts," 2015).

### **Was the 21<sup>st</sup> Amendment Really Abusive?**

The state authorities provided justification that some extra ordinary situations and circumstances were compelling the state to take some special measures such as 21<sup>st</sup> Amendment for speedy trial of offences relating to terrorism. The state authorities claimed that there existed unprecedented and grave threat to

the territorial integrity of Pakistan by foreign funded terrorists. Therefore, in these extra ordinary situations, it is expedient that an appropriate amendment is made to the Constitution (The Constitution, n.d).

There was a common perception that the 21<sup>st</sup> Amendment as a counter-terrorism strategy was an abusive constitution as it allowed military to dominate in policy making process of the state and in return resulted in weakening of the civilian control over the state affairs. Moreover, the Amendment also curtailed civil liberties and hence undermined democracy. Below is the detail of how far 21<sup>st</sup> amendment affected control of civilian rule over policy making areas.

## **21<sup>st</sup> Amendment to Constitution and Degree of Military and Civilian Rule's Control over Key Policy Making Areas in Pakistan**

As stated earlier, to find the degree of control of the civilian rule over the state affairs we will use the above mentioned five parameters (elite recruitment, internal security, public policy, military organization and national defence) introduced by [Croissant, Kuehn and Lorenz \(2012\)](#).

As soon as, the military run school, was targeted, the media reports showed that the terrorist act offended the entire nation including army. The military leadership visited Kabul and demanded Afghan government to hand over wanted terrorists to Pakistan. At the domestic level, the state institutions such as parliament and military showed reservations over the legal system of the state. According to some media reports, the aftermaths of the incident brought the political leadership and military on one page and the PML-N started supporting the "military leadership's demands for the formation of Military Courts....and agreeing to lifting the moratorium on the death penalty" ("[Major Developments,](#)" 2015). However, the political leadership was criticized on a notable scale for meeting the demands of army regarding establishment of the military courts ([Lawyers Observe Black Day, 2015](#)). Although, the military leadership tried to defend and justify the situation as General Raheel Sharif said, "Special courts are not the desire of the army but need of extraordinary times" (Special Courts 'Need,' 2015). The critics viewed functioning of the military courts similar to allowing martial law in the country. It was noted that this new 'model of cohabitation' brought military's significant involvement in policies addressing national defence and security of the state. Many observers pointed out that the elected civilian government capitulated in the areas where it should have been more assertive. It was perceived that the legislative surrendered policy making authority to the military by accepting their demand of extending judicial roles to them ("[Major Developments,](#)" 2015).

Apparently, the Amendment was made to bring terrorist-related incidents under the military's jurisdiction. Some analysts viewed Amendment as an illustration of abusive constitutionalism which strongly destabilized democracy, as separation of power between state institutions drawn in Constitution was largely undermined specifically between executive and judiciary. To overcome the challenge, the Army decided to strengthen its legal department and created a new post of Director General Law affairs Directorate (DG LD), supposed to be held by a Maj. General ([Amin, 2015](#)).

Some of the other powers that the military gained through the 21<sup>st</sup> Amendment included; authority to try individuals crossing national boundaries, dealing with the cases pending in any trial courts and cases sent by the federal government to military courts. Those convicted by the military courts were denied right of appeal before civilian courts. The Legislative Assembly gave judicial mandate to the executive functionary (See for example, "The New Martial Powers," 2015).

In short, the military was assigned more roles than they were required to fulfil their first degree missions of defence and security.

The Amendment also brought change in military organization policies that define "mission, roles and structure" of the military. In a perfect civilian control over government, the civilians must have an authority to define boundaries and range of the autonomy required enough for the military to fulfill its mission

([Croissant, Kuehn and Lorenz, 2012](#)). The 21<sup>st</sup> Amendment authorized the military to fix boundaries and range of their autonomy themselves as the establishment of the military courts and lifting on moratorium was a demand of the military which was fulfilled by civilians in order to get military's support for the civilian government. Accepting the demands of setting up of the military courts by the civilians, led the military to define range and boundaries required to fulfill their mission which in fact was conflicting to an ideal civil rule ([Shams, 2015](#)).

Furthermore, in case of internal security affairs, the civilian government has to decide military's mission, goals, principles and guidelines for military's activities in several situations such as, riot control, counterterrorism, law enforcement etc. ([Croissant, Kuehn and Lorenz, 2012](#)). In case of 21<sup>st</sup> Amendment it was military that became a decisive force and extended its mission and goal from the battlefield to judicial roles as a part of internal security policies ([Shams, 2015](#)). By allowing military officers who were unknown to legal profession to run military courts, the civilians let the military entered into the judicial system of the state which also raised objections over the separation of judicial and executive powers and also led to the weakening of democracy.

Public policy is an area comprising rules and processes of policy formulation and implementation addressing public welfare. Military's influence in public policy leads it to determine economic, social, and political policies of the state. The degree of civilian control depends on influence of the civilians over policy making process and keeping check on the state agencies, responsible for policies implementation. ([Croissant, Kuehn and Lorenz, 2012](#)). In case of 21<sup>st</sup> Amendment, one can find that policy making towards refiguring judicial system in the military set up was the brainchild of the military. Later, the military started running the courts secretly that were not answerable to the civilian rule for their performance. The military in the matter of trials, prosecutions and other similar affairs was not answerable to any state institution under the civilian control. Furthermore, the language of the preamble of the Act "people of Pakistan have expressed their firm resolve through their chosen representatives," "to permanently wipeout and eradicate terrorists," "constitutional protection to the necessary measures" and "interest of security and integrity of Pakistan" (The Constitution, n.d)) clearly carved out and legalized role of military in some of the key areas addressing internal security, public policy, and national defense.

The above description shows that like the global trends, the military in Pakistan did not intervene in politics directly toppling the democratically elected government rather using abusive constitution, the military kept the real powers to run state affairs with itself which undermined democracy. It is also quite pertinent to find whether the Constitutional Amendment more specifically the content of the 21<sup>st</sup> Amendment, really abusive enough to curtail civil liberties and hence undermined democracy.

### **Content of 21<sup>st</sup> Amendment and Civil Liberties**

As discussed earlier, abusive constitutionalism also undermines democracy by making constitutional changes and amendments curtailing civil liberties. Article 8(1) and (2) of the Constitution of Pakistan provides a guarantee that any such law should be void that violates fundamental human rights of the citizens. In order to safeguard from Article 8(1) and (2), 21<sup>st</sup> Amendment was inserted in the first schedule. The 21<sup>st</sup> Amendment gave a legal cover to the military courts to try cases of civilians falling under the category of terrorism using the name of religion or sect. Earlier the military courts had power to try only those who were in active service. Under section 85 of the Army Act 1952, a military court consists of three to five serving officers and legal training for the military officers in the military court was not mandatory. However, the military court was advised by a law officer, the Judge Advocate General of Pakistan Army ("Pakistan: Military Trials," 2015). The convicted persons could appeal military appellate tribunal and the verdict of the tribunal was unchallengeable in the apex civilian courts according to the Constitution ("Pakistan: Military Trials," 2015).

It is quite noteworthy that the military courts were assigned responsibility to deal the terrorists who used religious justification and sectarian affiliations to carry out their violent activities. Just a recent history of Pakistan shows that these religiously motivated militants were considered as state's assets in 1980s but were later declared as enemies by the state after 9/11. The conceived purpose of delegating power to the military aimed elimination of those assets who were renamed as enemies and terrorists in the post-9/11 era. Ole Waever (and Barry Buzan of the Copenhagen School) strongly hold the opinion that speech-acts are used by the state agents and security elites to realize the masses that a specific issue is a security challenge. The state agents and security elites, while delegating powers to the military to eliminate those enemies used the same speech acts. This strategy helps for social and political mobilization. Briefly, specific goal-oriented strategies turn any event into security concern for the audience and the issue of security concerns become social construction (Neal, 2010; also see, Waever, 1995, p.55). For instance, while discussing the need of 21<sup>st</sup> of Amendment, some of the popular vocabulary used was:

- situation of war, state of war,
- treacherous and invisible enemy,
- survival and existence,
- extraordinary measures,
- threatening the security of Pakistan,
- speedy trials of offences,
- existential threat,
- waging of war,
- threat to territorial integrity,

This created perception among the masses that terrorism is a social issue which required urgent attention at the state and at the societal level to secure the state. A situation of exceptionalism was created which demanded full empowerment to the military in several state affairs. In Carl Schmitt (1985) and Giorgio Agamben (2005) and Securitization theory, the discourse of exceptionalism largely invokes legitimacy due to the excessive use of the concept of danger, threat, necessity and security. "Carl Schmitt defines exceptionalism as the domination of the ruling classes manifested as the sovereign decision on the exception. Agamben considers exceptionalism as the sovereign decision on bare life and political life. The securitization theory describes it as elites declaring issues to be security problem" (Amin, 2015).

Under the same sort of exception, the Peshawar tragedy which was declared as threat to the state's security led the masses to withdraw from some of their fundamental rights in order to make the future of the state secure. There was a common perception that the military was already seeking exceptional sovereign practices (such as torture, and detention without trial) and Peshawar tragedy provided an opportunity to practise and legalize those practices under the cover of exceptionalism. In fact, the military knew the potential of the anti-state actors to damage the state because going back to history, one can find that some prominent political and military leadership of the major global and regional powers facilitated those, who were named as mujahideen to promote violence in the region during 1980s (for more details see, Hilali, 2017) and then renamed them as militants (after 9/11). W Wesley Pue wrote,

"Bizarrely, *knowing* facilitation can happen even though no terrorist activity was in fact carried out, where the 'facilitator' does not know "that a particular activity is facilitated", and where no particular terrorist activity was foreseen or planned at the time it was facilitated"(Pue, 2003,277, 278).

Apparently, no terrorist activity was taking place at that time period in 1980s, although violence was promoted but that was considered sacred in the name of jihad. Later, it was decided to remove those militants from the society who started challenging the writ of the state. No doubt, that 16/12 incident

was largely taken as symbolic crime against the sovereignty of Pakistan. Nevertheless, the 21<sup>st</sup> Amendment, emerged out of the realm of exceptionalism, did not merely aim at restoration of law and order situation through apprehension, investigation and punishment; rather it was “terrifying restoration of sovereignty.” Keeping in view the support provided to militants at the time when they were called mujahideen under exceptionalism and secret trial of those, renamed as militants under exceptionalism after 16/12 led to curtailing of civil liberties which was a perfect feature of abusive constitutionalism undermining democracy. Beyond doubt, civil liberties are the most significant feature of the modern liberal democracies. The denial of civil liberties was in fact equivalent to undermining democracy. Andrew Neal’s concept of contemporary exceptionalism well-depicts the situations prevailed in Pakistan. For him;

“contemporary exceptionalism should be described and analyzed as a novel recombination of already-existing discourses, mechanisms and modalities of power, some in active use already, others reawakened from dormancy”(Neal, 2010, 124). The abusive 21<sup>st</sup> Amendment was also violation of the international law for two main reasons; firstly, it was marked as deviation from the international standards, set for dispensation of justice, as the chances of fair trial and reviewing petition to people charged with criminal offences was denied. Secondly, as per international law, “jurisdiction of military tribunals should be restricted solely to specifically military offences committed by military personnel. They should not, in general, be used to try civilians or to try people for gross human rights violations” (“Military Injustice,” 2016). So, by all aspects it can be claimed that 21<sup>st</sup> Amendment falls under the abusive constitutionalism. The study recommends that by eliminating corruption and improving judicial system in the state, justice can be provided to all without any discrimination and abusive constitutionalism can be avoided. In fact military’s prime responsibility is protecting the state from external enemies and the wave of terrorism in Pakistan after 9/11 was implanted by the regional powers. The failure of judiciary led to abusive constitutionalism and paved the way for the military to intervene in politics and judiciary.

## Conclusion

The study discusses the constitutional development in Pakistan more specifically in context of the 21<sup>st</sup> Amendment to the Constitution of Pakistan. The study depicted that the global trends of taking over governments by the military have been changed. Abusive constitutionalism is also used as a tool by the military in some states to undermine democracy. The study finds that in the case of Pakistan, where military has been a decisive factor in state affairs and has toppled the governments on previous occasions, abusive constitutionalism is effectively used by the military to dominate state affairs even in democratic regimes. The research depicted that the entire process of the formulation and passage as well as content of the 21<sup>st</sup> Amendment showed that the military dominates in areas such as public policy, internal security, military organization and national defense as compared with the civilian rule. The entire process of its formulation and implementation along with its content tilted the balance of power in the favour of the military and hence undermined the democracy in Pakistan. The paper also draws conclusion that the 21<sup>st</sup> Amendment passed by the Legislative Assembly as a counter-terrorism strategy curtailed civil liberties and violated human rights which also led to undermining of democracy. So, 21<sup>st</sup> Amendment to Constitution was a perfect illustration of abusive constitutionalism.



## References

- Amin, H. (2015). Politics of Counter-terrorism and the 21st Constitutional Amendment in Pakistan, *Pakistan Perspectives*, 20(2), 9-18.
- Croissant, A., Kuehn, D. and Lorenz, P. (2012). *Breaking With the Past? Civil-Military Relations in the Emerging Democracies of East Asia*. Honolulu: East West Center Policy Studies.
- Deborah, A. (1994). *Political Institutions and Military Change: Lessons from Peripheral Wars*. Ithaca: Cornell University Press.
- Diamond, L. (1999). *Developing Democracy: Toward Consolidation*. Baltimore: Johns Hopkins University Press.
- Dixon, R., Landau, D. (2015). Transnational Constitutionalism and a Limited Doctrine of Unconstitutional Constitutional Amendment. *International Journal of Constitutional Law*, 13(3), 605-638.
- Feldman, N., Landau, D., Sheppard, B., & RosaSuazo, L. Report to the Truth and Reconciliation Commission of Honduras: Constitutional Issues (Fla. St. U. Pub. Law & Legal Theory, Research Paper No. 536, 2011), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1915214](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1915214).
- Grare, F. (2016). The Challenges of Civilian Control Over Intelligence Agencies in Pakistan. In *Intelligence, National Security and Foreign Policy: A South Asian Narrative*, eds. A. S. M. Ali Ashraf. Bangladesh Institute of law and International Affairs, BILIA: Dhaka.
- Heine, J. and Weiffen, B. (2015). *21st Century Democracy Promotion in the Americas. Standing up for the Polity*. London/New York: Routledge.
- Hilali, A.Z. (2017). *US-Pakistan Relationship: Soviet Invasion of Afghanistan*, London and New York: Routledge.
- In the Name of Security: Counter Terrorism Laws Worldwide since September 11, June 2012, Available at: <https://www.hrw.org/report/2012/06/29/name-security/counterterrorism-laws-worldwide-september-11>.
- Khalid, I. (2012). Role of Judiciary in Evolvement of Democracy in Pakistan. *Journal of Political Studies*, 19(2), 125-142 <http://pu.edu.pk/images/journal/pols/pdf-files/role%20of%20judiciary-winter2012.pdf>.
- Kohn, R. H. (1997). How Democracy Control the Military. *Journal of Democracy*, 8(4), 140-153.
- Franck, T. M. (1992). The Emerging Right to Democratic Governance. *American Journal of International Law*, 86(1), 46-91.
- Landau, D. (2013). Abusive Constitutionalism, 47 U.C. DAVIS L. REV. 189, 195, Available at; [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2244629](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2244629).
- Lawyers Observe Black Day against 21st Amendment. *The Dawn*, January 30, 2015.
- Major Developments affecting Civil-Military Relations in Pakistan(2015). Pildat. [http://www.pildat.org/Publications/publication/CMR/MajorDevelopmentsAffectingCivilMilitaryRelationsInPakistan\\_June012013\\_May312015.pdf](http://www.pildat.org/Publications/publication/CMR/MajorDevelopmentsAffectingCivilMilitaryRelationsInPakistan_June012013_May312015.pdf)
- Manan, A. (2014, December 25). Fight against Terrorism: Defining Moment. *The Express Tribune*.
- Manan, A. (2015, January 1). National Action Plan: Govt to Seek APC's Consensus on Legal Cover for Military Courts. *The Express Tribune*.
- Military Injustice in Pakistan", International Commission of Jurists. (2016), accessed at: <https://www.icj.org/wp-content/uploads/2016/06/Pakistan-Military-court-Advocacy-Analysisbrief-2016-ENG.pdf>,
- Neal, A. W. (2010). *Exceptionalism and the Politics of Counterterrorism: Liberty, Security and the War on Terror*. New York, Routledge.
- Pakistan: Military Trials for Civilians, Questions and Answers (2015). International Commission of Jurists.
- Parliament Passes 21st Constitutional Amendment, Army Act Amendment," *The Dawn*, January 6, 2015.



- Pue, W. W. (2003). The War on Terror: Constitutional Governance in State of Permanent Warfare. *Osgoode Hall Law Journal*, 41(2/3), 277-78.
- SC upholds military courts, rejects pleas against 18th and 21st amendments. (2015, August 5) Available at: <https://www.geo.tv/latest/99286-sc-upholds-military-courts-rejects-pleas-against-18th-and-21st-amendments>
- Shams, S. Is Pakistani military's power obsession aggravating rights situation? April 17, 2015, Available at: <http://www.dw.com/en/is-pakistani-militarys-power-obsession-aggravating-rights-situation/a-18389392>
- Special courts 'need of extraordinary times': COAS General Raheel Sharif, *Pakistan Today*, January, 2, 2015. <https://www.pakistantoday.com.pk/2015/01/02/special-courts-need-of-extraordinary-times-coas-general-raheel-sharif>.
- The Constitution (Twenty-first Amendment) - National Assembly of Pakistan.
- The New Martial Powers (2015, January 7). *The Dawn*.
- United Nations General Assembly (2005). World Summit Outcome, A/RES/60/1, October 24, 2005, paras 138–139, available at: <http://www.un.org/womenwatch/ods/A-RES-60-1-E.pdf>.
- Waever, O. (1995). *Securitization and Desecuritization*. In *On Security*, ed. Ronnie D. Lipschutz. New York; Chichester: Columbia University Press.
- Wobig, J. (2015). Defending Democracy with International Law: Preventing Coup Attempts with Democracy Clauses. *Democratization*, 22 (4), 631-654.
- Zakaria, F. (1997). The Rise of Illiberal Democracy. *Foreign Affairs*, 76(6) , 22-43.