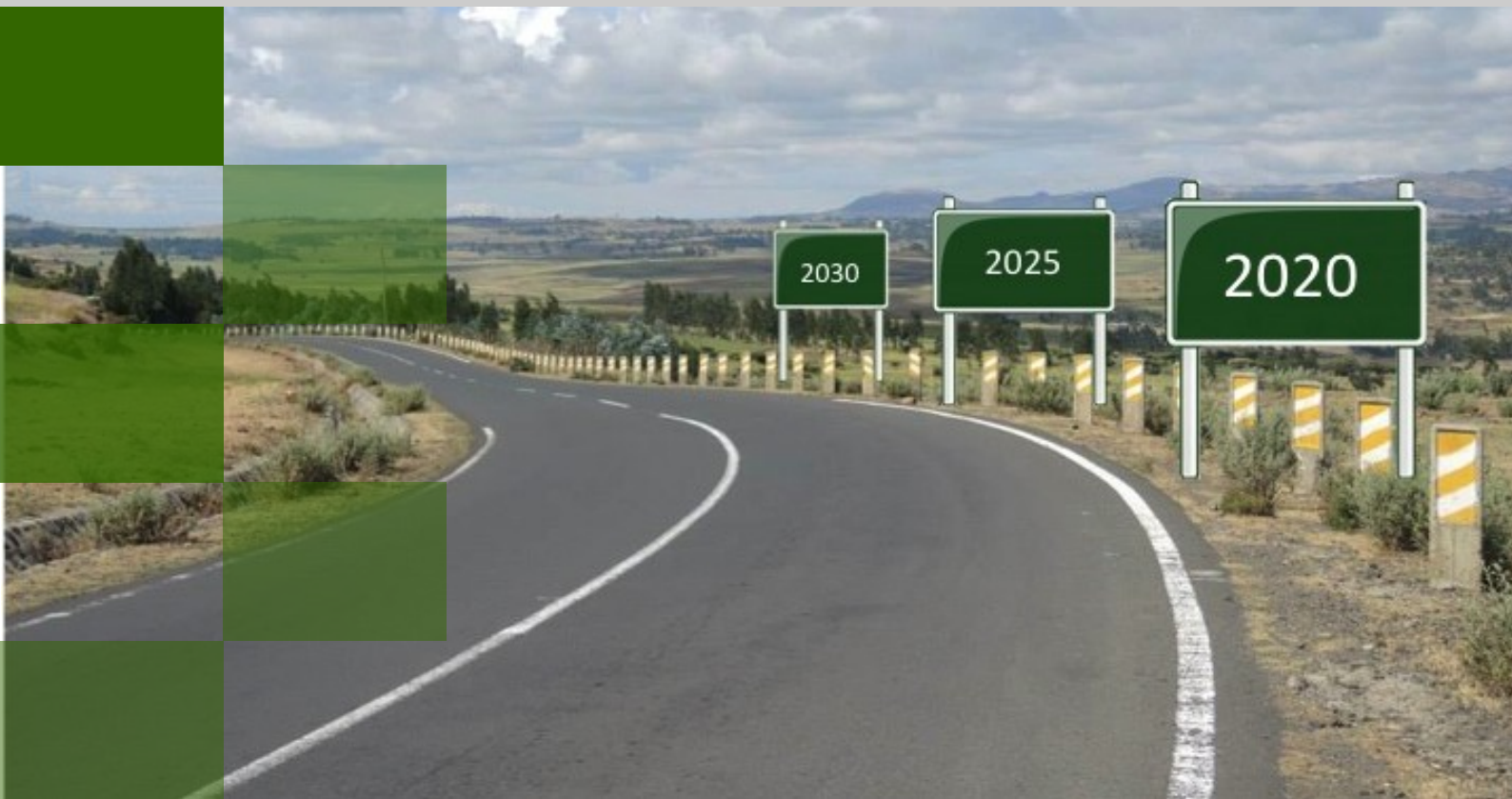


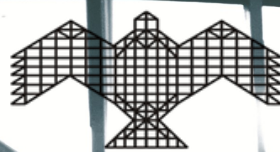
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Military Courts in Pakistan: Will they return? What are the implications?

D. Suba Chandran



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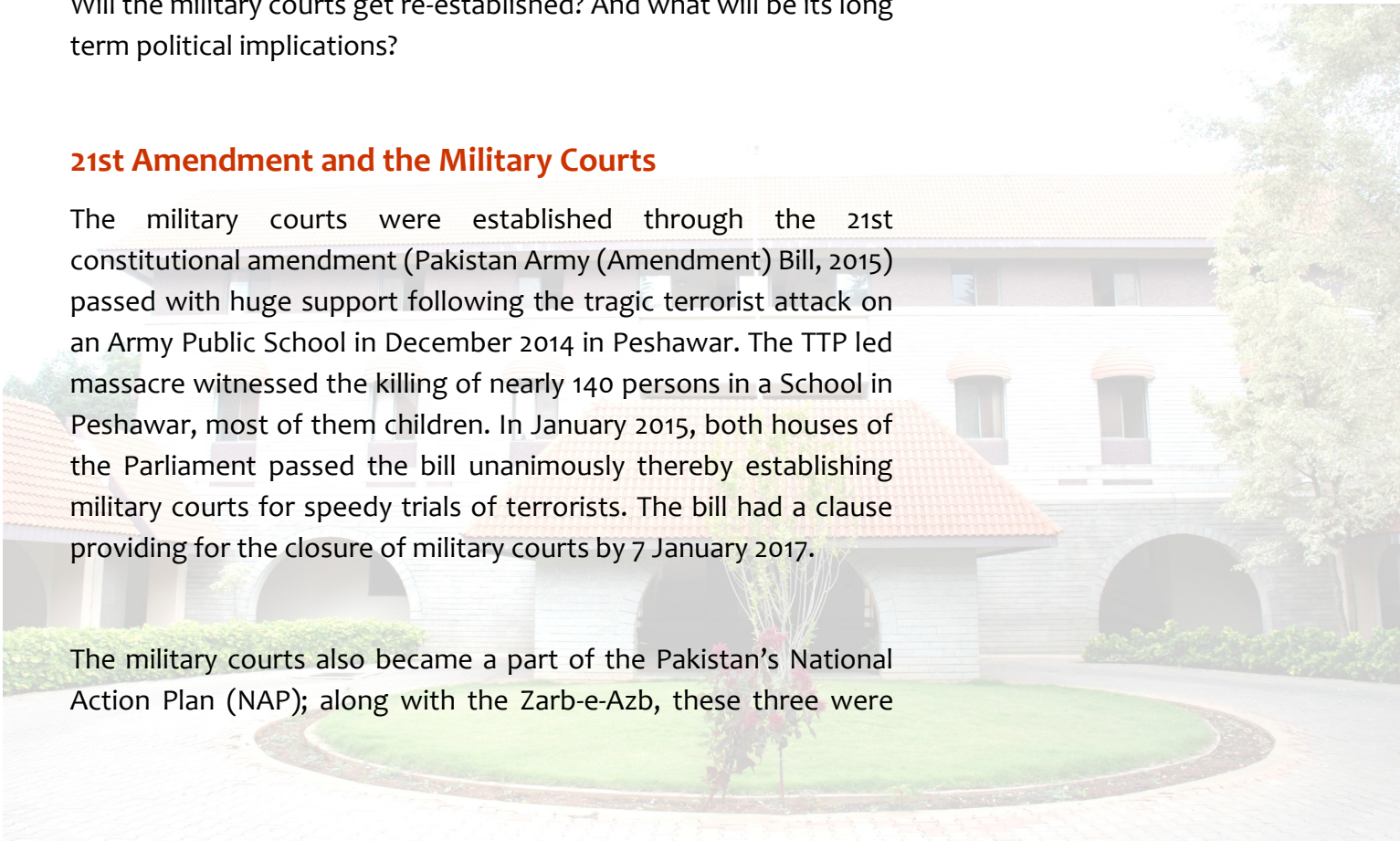
During the first week of January 2017, many in Pakistan were surprised, when the government allowed the earlier Parliamentary legislation on the military courts to elapse. The civil society in Pakistan, to a large extent, responded positively to this development and wanted the government to take control and initiate a political and legal process to address terrorism. However, two press releases - post 7 January 2017 from the PMO and the military's ISPR hint at the return of military courts.

Will the military courts get re-established? And what will be its long term political implications?

21st Amendment and the Military Courts

The military courts were established through the 21st constitutional amendment (Pakistan Army (Amendment) Bill, 2015) passed with huge support following the tragic terrorist attack on an Army Public School in December 2014 in Peshawar. The TTP led massacre witnessed the killing of nearly 140 persons in a School in Peshawar, most of them children. In January 2015, both houses of the Parliament passed the bill unanimously thereby establishing military courts for speedy trials of terrorists. The bill had a clause providing for the closure of military courts by 7 January 2017.

The military courts also became a part of the Pakistan's National Action Plan (NAP); along with the Zarb-e-Azb, these three were



seen as Pakistan's primary counter terrorism strategy. While the Army is still continuing with the Zarb-e-Azb, the achievements and failure of the NAP have become a political issue during the recent months, whereas the military courts technically came to an end on 7 January 2017.

According to media reports, close to 270 cases were tried by the military courts; of which majority of them (around 160) were sentenced to death (though a small number were actually executed) and the rest to prison. Despite a 90 percent conviction, civil society does complain about lack of transparency in the above trials.

Though, there were discussions in the media during the late 2016 itself on the impending deadline, there were no political debates within the Parliament on providing an extension to the military courts. With no action, the tenure of the military courts automatically came to an end in early January.

However, a press release from the Prime Minister's Office on 09 January 2017, referring to a high level meeting chaired by Nawaz Sharif mentioned about a review of internal and regional security situation "with a view to further strengthen the gains made through counter-terrorism operations" and emphasised the following: "...the Military Courts have played an extremely important role at a very crucial juncture of one action against extremism and terrorism and translated the actions under operation Zarb-e-Azab to meaningful and tangible national gains. The Federal Government has already initiated consultations for constitutional amendment to continue the Military Courts for a period which is agreed by all political parties represented in the Parliament."

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The above meeting was attended by ministers of finance and interior, and by the Chief of Army Staff and DG ISI besides Special Advisor to PM on Foreign Affairs and the National Security Advisor. Separately, the recent Corps Commanders' meeting at the GHQ in Rawalpindi on 10 January 2017, according to an ISPR press release "appreciated performance of Military Courts during the

prescribed duration which resulted into reduction of terrorism.” Clearly, the GHQ would want the military courts to continue.

So what is likely to happen? Will the military courts return, through another amendment?

Most likely, yes.

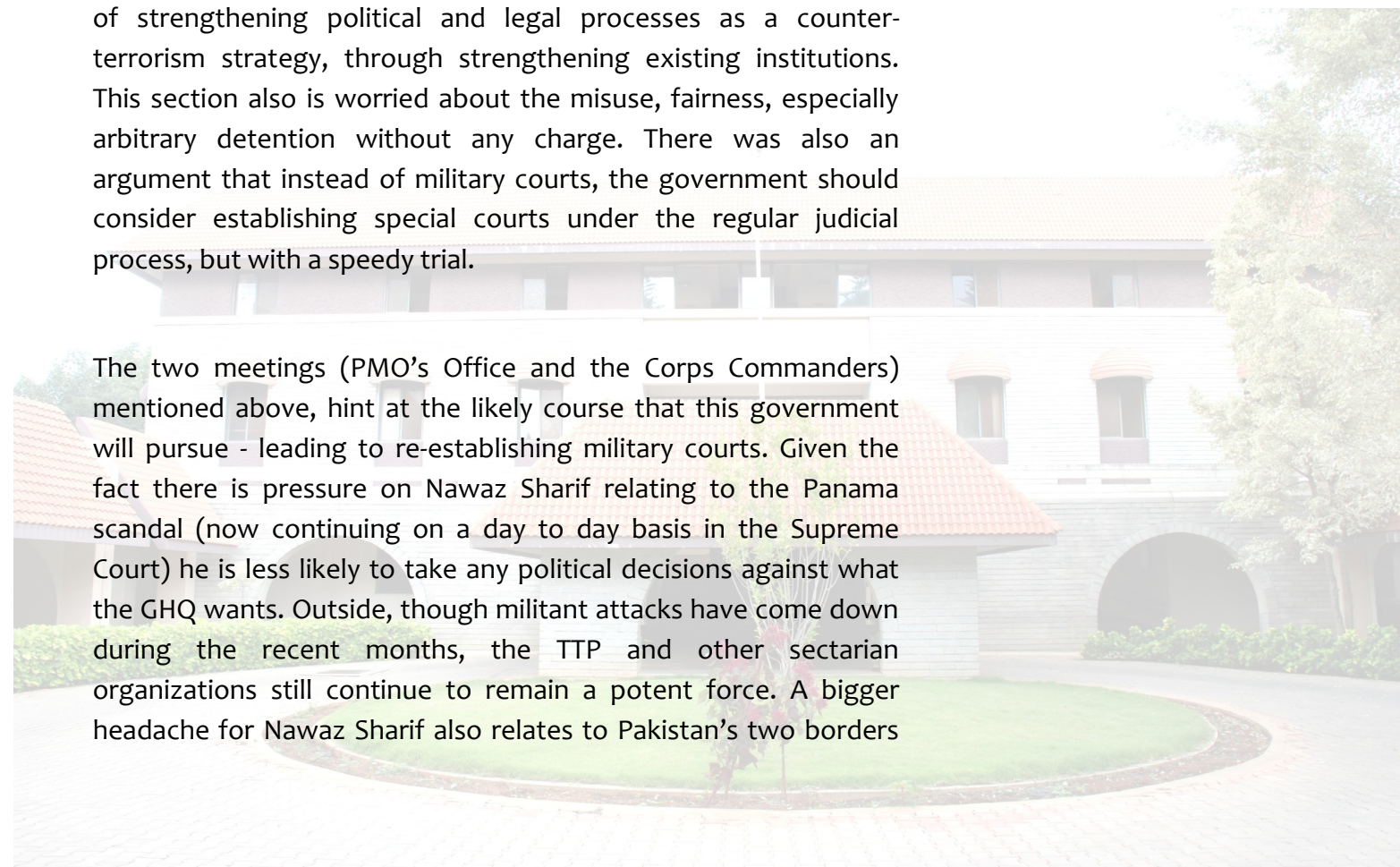
Outside the GHQ, a section within Pakistan also wants to extend the military courts for the following reasons. They consider that the regular courts are not fool proof, take time and allow the militants to escape from getting convicted. They also argue that the military courts dispense justice at a faster pace and death sentences will convey a strong message to the terrorists and prevent them from pursuing a violent course.

On the other hand, a section also argues that despite the military courts, terrorism continues unabated. A military trial and any subsequent death penalty is unlikely to prevent suicide terrorists who care less about their own lives. This section argues in favour of strengthening political and legal processes as a counter-terrorism strategy, through strengthening existing institutions. This section also is worried about the misuse, fairness, especially arbitrary detention without any charge. There was also an argument that instead of military courts, the government should consider establishing special courts under the regular judicial process, but with a speedy trial.

The two meetings (PMO's Office and the Corps Commanders) mentioned above, hint at the likely course that this government will pursue - leading to re-establishing military courts. Given the fact there is pressure on Nawaz Sharif relating to the Panama scandal (now continuing on a day to day basis in the Supreme Court) he is less likely to take any political decisions against what the GHQ wants. Outside, though militant attacks have come down during the recent months, the TTP and other sectarian organizations still continue to remain a potent force. A bigger headache for Nawaz Sharif also relates to Pakistan's two borders

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in the east and west relating to India and Afghanistan. In the recent months, both borders have become volatile.

Nawaz Sharif seems to have outsourced Pakistan's foreign policy towards India and Afghanistan to the military establishment. And so is the counter terrorism strategy within Pakistan. The Zarb-e-Azb has been conceived, expanded and executed by the military directly, with less or no political inputs. Until the Zarb-e-Azb comes to an end (or military says it has come to), Nawaz Sharif is less likely to question military's counter terrorism strategy.

The military as an institution in most parts of the world will need solid legislations to continue its operations especially on the civilian space. Pakistan's military is no exception; given its political role since the inception, it is unlikely to voluntarily return that space to the political establishment. With the government willing to provide that space, Pakistan's military be only too willing to grab the opportunity and expand its boots on civilian grounds.

Return of the military courts in Pakistan now is a foregone conclusion. The question is what the short term challenges are for Sharif (in getting the extension through another Parliamentary amendment) and long term issues (in terms of shrinking political space in domestic governance and external relations).

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His primary challenge will be to get the political parties on the same page – both within and outside the Parliament. Imran Khan and the PTI have been on a war path against Sharif, and it is highly unlikely that Imran would agree to any proposal from Nawaz Sharif. Not all political parties are on the same platform in reviving the military courts. The PPP, generally having been at the receiving end from the military would like to look into some principles to hide its own prejudices against the military. Fazlur Rehman and Amir Siraj ul Haq of the JUI-F and JI respectively have already expressed their reservations on reviving the military courts. Ideologically JI and JUI are closer to the other side; they may have the street power, but not enough numbers to vote against in the Parliament. The PPP and PTI holds the key.

Though the opposition political parties are likely to object the extension on some principles, or try to corner the Sharif government for not doing enough, they are not likely to stand in the way of the military courts from getting re-established. Perhaps there will be another time bound extension, with a mandate to strengthen the regular judicial process in the mean time. Also, the ISI is strong enough to manipulate what the military would want on this issue.

The larger challenge for Sharif in the long run, in re-establishing the military courts will be on the shrinking role political institutions in dealing with terrorism. Today, the military has aggrandized most of the decision making process in Pakistan's counter terrorism strategy

Return of the Military Courts: What are the likely implications?

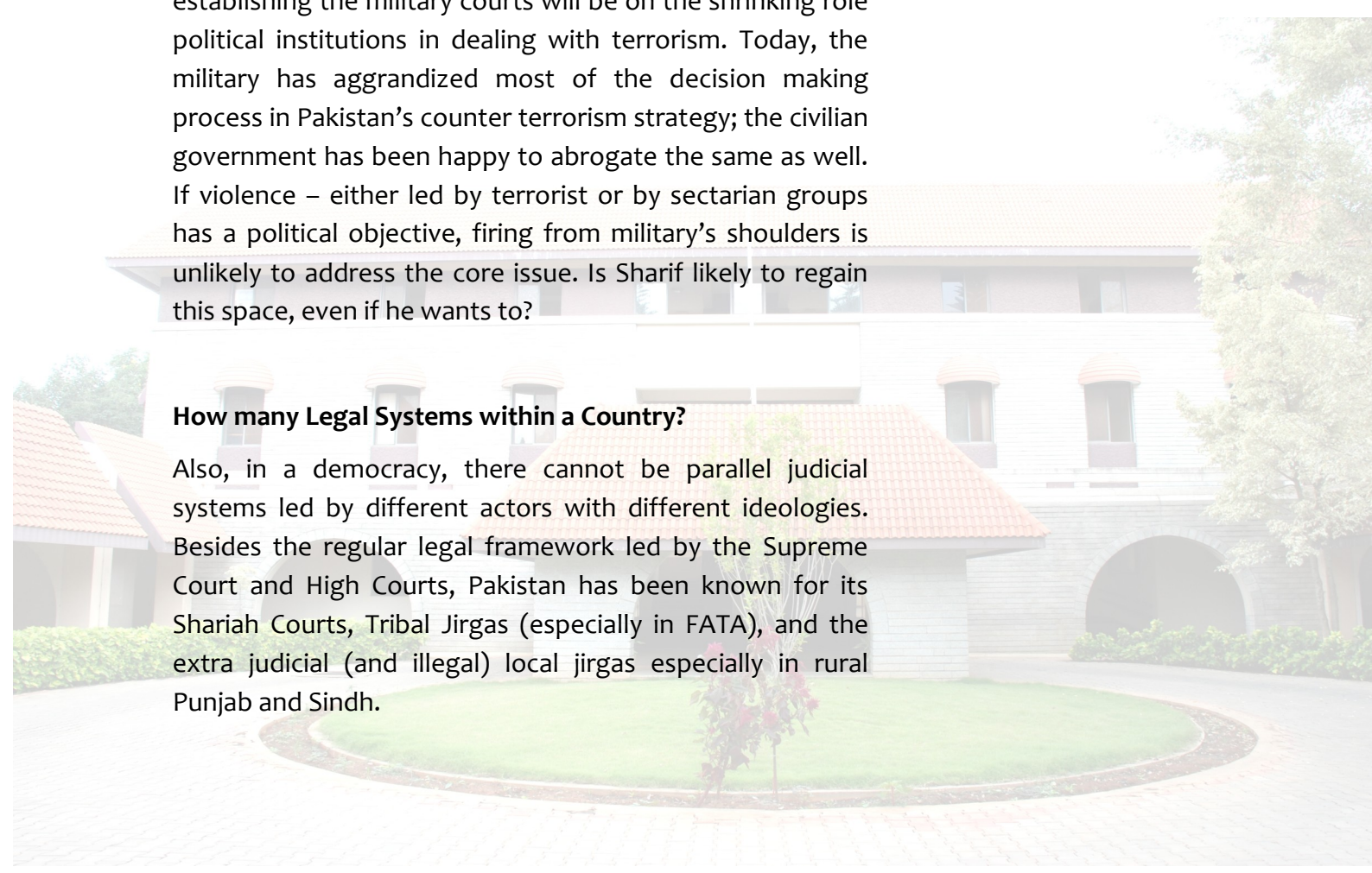
Implications of the return of military court are bound to be substantial in terms of the space the political leadership has to deal with counter terror strategy and also the larger civil-military equations on governance questions.

Political Role in Countering Terrorism: Shrinking?

The larger challenge for Sharif in the long run, in re-establishing the military courts will be on the shrinking role political institutions in dealing with terrorism. Today, the military has aggrandized most of the decision making process in Pakistan's counter terrorism strategy; the civilian government has been happy to abrogate the same as well. If violence – either led by terrorist or by sectarian groups has a political objective, firing from military's shoulders is unlikely to address the core issue. Is Sharif likely to regain this space, even if he wants to?

How many Legal Systems within a Country?

Also, in a democracy, there cannot be parallel judicial systems led by different actors with different ideologies. Besides the regular legal framework led by the Supreme Court and High Courts, Pakistan has been known for its Shariah Courts, Tribal Jirgas (especially in FATA), and the extra judicial (and illegal) local jirgas especially in rural Punjab and Sindh.



Expanding footprints of the Military

The military courts, adding to the above should have been an exception and time bound. One could understand the emotional decision to establish them especially after the December 2014 massacre of children. But allowing them to continue even two years after their establishment needs caution.

Escaping the Judicial Reforms

Though the military courts may be effective in terms of time taken to dispense justice, it will not address the real problems of the larger judicial process and reforms. This is a case not only in Pakistan, but also in rest of South Asia. Instead of addressing the larger question of judicial reforms for timely and effective justice, looking at the military as a solution—short term or otherwise, may end up denting the institutions meant for delivering justice.

Narrowing role of the Political

How many social, legal, religious and military institutions can dispense justice within a single country? And won't they shrink the political space for democratic actors further, which is actually the primary cause for breakdown of governance?

For Sharif, allowing the military courts to return may be a short term gain and based on political expediency. It will come back to haunt him and the subsequent democratic governments in the long term.

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Views expressed are author's own.

