

**RESEARCH PAPER****The Concept of Fair Trial in Pakistan: A Comprehensive Examination of Implementation and Global Recognition****Saqiba Saleem<sup>1</sup> Faiza Chaudri<sup>2</sup> Gohar Masood Qureshi<sup>3</sup> Amara Amir<sup>4</sup>**<sup>1</sup> PhD scholar (Law), TIMES Institute, Multan, Pakistan.<sup>2-3</sup> Lecturer, Department of Law, University of Sialkot, Punjab, Pakistan.<sup>4</sup> Senior Lecturer, Bahaha School of Law, Bahra University Islamabad Pakistan.\*Corresponding Author [goharqureshi2@gmail.com](mailto:goharqureshi2@gmail.com)

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**ABSTRACT**

The right to a fair trial is a fundamental pillar of justice, embodying principles of due process, impartiality, and transparency. In the context of Pakistan, this study offers a rigorous exploration of the practical implementation of fair trial rights within the country's legal framework. It also investigates the international recognition and acceptance of Pakistan's efforts in upholding these rights. This comprehensive examination delves into the challenges, successes, and shortcomings faced by the Pakistani legal system in ensuring a fair trial for its citizens. It scrutinizes the various legal mechanisms, precedents, and institutional structures that influence the realization of these rights. Furthermore, the article assesses Pakistan's compliance with international standards and the degree to which its fair trial practices are acknowledged on the global stage. It sheds light on the country's commitments under international human rights conventions and scrutinizes the perceived alignment with these commitments. The findings of this research reveal the complexities inherent in the implementation of fair trial rights in Pakistan, providing insights for policymakers, legal practitioners, and human rights advocates. Moreover, it offers a valuable perspective on the global recognition and evaluation of Pakistan's endeavors in safeguarding the right to a fair trial. In sum, this study contributes to the ongoing discourse on human rights and justice in Pakistan by offering a comprehensive analysis of the practical implications and international dimensions of the right to a fair trial within the country's legal landscape. The qualitative research methodology has been applied in the following article.

**Keywords:** Right to fair trial, constitution of Pakistan, implementation.

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**INTRODUCTION**

Individuals who are charged or implicated in a legal conflict have the right to a just and impartial trial. This encompasses a just and transparent legal proceeding, carried out promptly, by an autonomous, unbiased, and unprejudiced judiciary. The concept of "Audi Alteram Partem," which translates to "hear the other side" as well as "no one should be condemned unheard," underscores the need of considering both perspectives before reaching a verdict or making a

judgment. This principle is based on the notion of natural justice, which promotes fairness, rationality, equality, and fairness. During legal proceedings, both parties are regarded as having equal standing and are afforded an equitable chance to state their arguments. National Justice refers to the application of common law principles that encompass notions of justice, reasonableness, equality, and equity. The purpose of this principle is to afford the opposing party an opportunity to address the evidence presented against them (Iqbal, M., & Iqbal, K. 2020).

The presumption of innocence—the legal principle that holds that a person is innocent unless and until they are proven guilty—is a vital part of the to a fair trial. It is a fundamental component of a fair society; thus, its significance cannot be overstated. This right pertains to the concept of procedural fairness. For example, when an individual is accused of a crime or wrongful behavior, they should not be subjected to endless incarceration. Instead, they should be granted a trial that is conducted in a manner that is fair, just, and according to procedural standards, overseen by an unbiased judge. Hence, the fundamental principle of democracy is in the right to a just trial, where the determination of one's innocence or guilt is made (Shah, 2016).

### **THE CONCEPT FAIR TRIAL IN CONTEXT OF HUMAN RIGHT NORMS**

Although the duties are not legally obligatory, nations are obliged to protect and respect the right to a fair trial, which is acknowledged globally as an essential human right. Numerous international documents, including the UDHR 1948, the ICCPR, nationwide human rights regulations, and law of war, guarantee a fair trial.

Article 14 of the ICCPR largely delineates the conditions for a fair trial. These norms are enhanced by procedural safeguards that are applicable to actions for the removal of foreign nationals, together with the premise that criminal/penal laws cannot be applied retroactively. In addition to being guaranteed under the ICCPR, the right to a fair trial is also outlined in numerous proclamations that represent customary international law. The practical implications of fair trial stem from the customary nature of the law. Customary rules are binding on all governments, regardless of their obligations under treaties. Furthermore, in light of Art 38(1)(c) of the Statute of the ICJ, the analysis of the right to a fair trial may also be regarded as a basic legal principle. The UDHR contains all of the several elements of the ICCPR's definition of the right to trial (Rafiq, Baig, Rana, & Safdar, 2022).

The right to a fair trial is guaranteed by numerous state laws on human rights as well as by international customary law. Particularly, the right to an impartial and fair legal system is safeguarded by Art. 6 of the ECHR. A similar right is guaranteed by Art. 8 of the ACHR. The ACHPR, the Revised Arab Charter on Human Rights, and the ASEAN Human Rights Declaration offer more thorough information about the right to a fair trial than do the ECHR and ACHR.

The law of war, particularly the 1949 Third and Fourth Geneva Conventions (GC), grants significant legal protections to prisoners of war and civilians detained for crimes committed during an international armed conflict. These treaties set specific entitlements and safeguards for individuals held in custody during periods of armed conflict.

In addition, the fair trial rights are further enhanced by Additional Protocol (AP) I to the GC, which is applicable to those accused of criminal offenses in connection with this specific form of armed combat. It establishes precise provisions that protect fair trial rights for those participating in violent wars. Additionally, it is believed that customary international law is reflected in the rule that prohibits the enactment of sentences and the carrying out of punishments without first receiving a ruling from a properly established court that provides all the legal protections that civilized societies consider necessary. The fair trial guarantees provided by human rights treaties remain applicable even during armed conflict, except in exceptional cases where a State is legally allowed to deviate from the fair trial provisions outlined in the relevant human rights treaties (Qayum, S., & Ahmad, 2022).

Two rapporteurs were assigned by the Commission in 1990 to gather information on the most recent international guidelines and standards pertaining to fair trial. They were tasked with examining national protocols concerning the right to a fair trial. In 1994, the rapporteurs brought to the ICCPR a draft proposal for a third optional protocol. Incorporating the fair trial as one among the non-derogable privileges specifically stated in Art. 4(2) of the ICCPR was the goal of this protocol. As stated in Art. 15 within the ECHR, the right to a just trial is now considered revocable, meaning that it can be temporally suspended in certain circumstances, such as during times of public emergency. The essential requirements for a fair trial in the context of international criminal law are included in the Rome Statute of the ICC (Shaikh, 2022).

### **THE DOCTRINE OF FAIR TRIAL IN PAKISTANI CONSTITUTION**

In 2010, the amendment known as the 18th was added to the Pakistani Constitution, introducing Art. 10-A, which guarantees the right to a fair trial. According to the article, anyone who are accused of a crime or are having their civil rights and obligations evaluated have a fair trial along with the process. Pakistan's Constitution, Art. 10-A, protects the basic entitlement to a fair trial and a proper process. While the law does not define the term "right to fair trial," Pakistan's highest courts have continuously recognized and upheld this right through a variety of rulings and statements, even before Article 10-A was added. The fair trial was clarified in a number of court decisions after it was incorporated into the Pakistani Constitution. One such instance is the interpretation given by the Supreme Court in the case of disregard of proceedings in court against former PM Yousuf Raza Gilani (Faisal, Usman, & Khan, 2023).

The Supreme Court ruled that the legislature intentionally lacked a precise description or explanation of the requirements for a just trial when it included Art.10-A in the constitution. This action was done to provide an internationally accepted definition that includes the right to a fair and unbiased hearing by an impartial and capable tribunal. "Nemo debet esse iudex in propria causa," or "no person ought to serve as a judge in their own case," is the underlying tenet of this view. This principle is widely acknowledged and firmly established in the legal system of Pakistan. It indicates that a judge must recuse themselves from a case if they have a personal involvement in it, irrespective of whether their judgement is affected by that interest. This principle guarantees that justice is not only achieved but also perceived to be achieved. The Supreme Court, in a separate instance, underscored the enduring significance of the fair trial principle in the dispensation of justice.

The inclusion of Article 10-A in the constitution has heightened the significance of adhering to due process of law, as outlined in both global and domestic legislation (Khan, A. S., Bibi, A., Khan, A., & Ahmad, I. 2023).

In order to synchronize investigation methods with the swift progress of the contemporary world, Pakistan implemented the Inquiry for Fair Trial Act in 2013. This legislation is applicable to all individuals who hold Pakistani citizenship, regardless of their place of residence, whether it be within or beyond the borders of the country. The main goal is to provide a method for effectively employing contemporary investigative techniques in order to gather evidence. The Act is as a protective measure to prevent intelligence and law enforcement organizations from exerting disproportionate and capricious authority during investigations. The objective is to achieve a harmonious equilibrium between efficient law enforcement and safeguarding the rights and freedoms of persons. Moreover, the Act implements a novel system of oversight, which is being governed by the Executive and Judiciary (Kanwel, S., Khan, M. I., Usman, & Khan, 2020).

The Court decided that the fair trial and the proper process has been elevated to the status of an inherent right for every person as a result of the Constitution's insertion of Art10-A. The notion of legal protection and fair treatment has become an intrinsic and non-negotiable entitlement of every person of Pakistan. According to the Constitution, any action that threatens the life, freedom, body, image, or property of any individual is not allowed, unless it is in compliance with the law. All individuals who are citizens of Pakistan have the right to receive fair and impartial treatment, as well as legal protection. It is crucial that the norms of natural justice and fair trial are upheld, and no one should have their fundamental rights denied or taken away by breaking these principles. The Court reiterated that any order or action carried out by any venue or body in contravention of fair trial and due process would be rendered invalid (Usman, M., Kanwel, S., Khan, & Khan, 2021).

## **THE CONCEPT OF FAIR TRIAL CRIMINAL AND CIVIL CASES**

In criminal and criminal proceedings, the assurance of a fair trial is crucial. It is illegal to violate due process, and any judgment that deviates from the standards of a fair trial is deemed void. Despite variations in wording and placement of the many fair trial rights, international human rights documents consistently define the fair trial in comparable terms. The fair trial in both criminal and civil cases includes several essential elements, at the very least.

Following the addition of Article 10-A to the Constitution, the tribunals have yet to offer a thorough and precise elucidation of the substance and extent of the entitlement to a just trial. In criminal matters, courts frequently issue broad pronouncements regarding the right in question without engaging in thorough examination. The Supreme Court has mostly concentrated on elucidating the significance of the right to appeal, the entitlement to a fair hearing, and the requirement of an unbiased tribunal. However, it has not extensively explored other facets of this right. The presumption of innocent has been characterized as a fundamental principle in the administration of justice. Interpret the text in written form (Khan, A., Javed, K., Khan, & Rizwi, 2022).

“Until proven guilty in line with the law, any person charged with a criminal offense will be entitled to the assumption of innocence. Furthermore, when it comes to the adjudication of any criminal offense, people have the right to specific fundamental protections that are provided to them in an equitable manner. These guarantees include the right to timely and thorough information on the basis and scope of the complaint made against them, in a language they can understand (Khan, M. I., & Riaz, 2024).”

The right to a fair trial encompasses not only judicial procedures but also administrative procedures. When someone's legal rights are in question, it is crucial to adhere to a just procedure to settle the disagreement. In civil proceedings, the principle of a fair trial extends to both parties, although in criminal situations, it largely focuses on safeguarding the rights of the convicted. Within our criminal justice system, we frequently encounter difficulties pertaining to the readiness and dedication of public attorneys, as well as delays in police investigations. The low rates of successful convictions provide substantiation for these concerns. It is crucial to acknowledge that the entitlement to a just trial encompasses not only the pursuit of justice for the individuals involved but also the consideration of the wider concerns of society. Crimes are offenses against the public that have a broad impact, hence the idea of a just trial must take into account the concerns of the accused, the the victim, and community at large (Riaz, N., & Usman, M. 2024).

If the state is unable to prove someone's guilt without a rational question in a public trial, there is a possibility that residents would view the consequences imposed as unfair. This diminishes the ethical authority of the law. To uphold the respect and belief of the society in the criminal justice system, it is essential to adhere to the reasonable doubt threshold. This norm guarantees that those who are not guilty are not erroneously convicted. Justice Brennan emphasized the importance of the reasonable doubt test in upholding the ethical authority of criminal law and preventing uncertainties over the conviction of innocent individuals.

According to the principles of criminal law, if the charges against the accused are proven, they should be punished. However, if they are judged not guilty, they should be acquitted. The court was presented with a situation where the police officers failed to timely file the charge sheet against the accused. The Supreme Court regarded this issue with great seriousness and instructed all legal officers, police authorities, and government officers to formulate a comprehensive strategy or method to avert substantial delays in the submission of charge sheets, the challans, and interim-challans in courtroom (Javed, Jianxin, & Khan, 2021). The court further emphasized the need to take appropriate measures against any officer proven to be responsible for such delays. The court also required that the Registrar of the Supreme Court be provided with detailed information about the actions taken, as well as comprehensive data on the pending cases under investigation. The court determined that the delay in question was in violation of Article 10-A of the Constitution. As a result, the petition was granted (Hussain, N., Khan, A., & Chandio, L. A. 2023).

Moreover, The petitioner was expelled from a fresh department to their home department without being provided a show reason notice as well as an opportunity for a personal hearing, as stated in the petition submitted under Art. 199, 4, 9 & 10-A. The Court determined that the decision in question infringed upon the principles of natural justice, equitable treatment, and the stipulations

outlined in Art. 4, 9, and 10-A of the Constitution of Pakistan. Consequently, the petition was approved (Khan, A., Iqbal, N., & Ahmad, 2022).

This underscores the notion that the complete realization of the right to a fair trial is contingent upon the effective implementation of similar rights for both parties involved. Nevertheless, the development of Pakistani constitutional jurisprudence in acknowledging this feature has been sluggish. The main purpose of a trial is to afford the accused the opportunity to address the criminal charges against them, and they should not be regarded as a detainee without sufficient grounds. There ought to be expeditious and equitable access to the legal system without any unjustifiable postponements. Neglecting to guarantee this could erode public trust in the legal system and exacerbate emotions of hopelessness, powerlessness, and frustration amongst those already grappling with challenges and adversity (Kanwel, S., Yasmin, T., & Usman, 2023).

## CONCLUSION

A fair trial is essential to the administration of justice and the defense of individual rights in both civil and criminal cases. We have looked at the important parts of this right in this article, considering the Pakistani Constitution as well as international human rights law. According to our research, the right to a fair trial is a practical set of guidelines and protections intended to guarantee that the legal system operates impartially, openly, and in conformity with the rule of law. It is not just an abstract idea. It is an essential defense against capricious and unfair government acts. The significance of the right to a fair trial within the legal framework of Pakistan is reaffirmed by the Constitution, which contains specific clauses and judicial interpretations. It emphasizes how essential a fair trial is to the requirements of due process, the assumption of innocence, and the right to counsel. We have also looked at how this right is protected by international human rights legislation, highlighting the agreement that this is an important right. Pakistan has pledged to respect these norms and guarantee that everyone under its authority is protected by the right to a fair trial as a signatory to worldwide treaties and conventions. It is crucial to recognize that, both in Pakistan and around the world, putting this right into practice can be difficult. Concerns about the independence of the courts, access to legal counsel, and courtroom delays are a few examples of issues that can hinder the successful implementation of the right to a fair trial. In conclusion, vigilance, reform, and conformity to international norms are still necessary, even in light of the progress made in Pakistan to protect the right to a fair trial. In order to guarantee the ongoing protection and advancement of the right to a fair trial, legislators, legal professionals, and members of civil society must work together. This is a work in progress. By defending this right, Pakistan can bolster its adherence to the rule of law, justice, and human rights, promoting a more just and equitable society for all of its residents.

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