

Right to Fair Trial under Article 10-A of the Constitution of Pakistan: Judicial Interpretation and Implementation Gaps

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ABSTRACT

Among the most important events in the contemporary constitutional history of the country is the constitutional entrenchment of the right to the fair trial and due process by the Constitution of Pakistan in Article 10-A. Article 10-A, which was introduced in 2010 under the Eighteenth Constitutional Amendment, explicitly provides procedural fairness in the course of the law, taking due process beyond being an implied judicial concept to being a stated fundamental right. This was meant to provide a solution to endemic shortcomings in the justice system of Pakistan in the form of arbitrary executive action, a lack of transparency in the process, excessive delays, and unfair access to justice. The paper is a critical analysis of the judicial interpretation of Article 10-A and an assessment of where the constitutional pledge of Article 10-A has been translated into effective legal practice or not. It claims that though the Pakistani courts have produced an increasingly broad and principled jurisprudence regarding the right to a fair trial, that implementation of the right has been highly imbalanced and structurally constrained. The article reveals the continuing implementation gaps caused by institutional flaws, inconsistencies in judicial application, political sensitivities, and administrative non-compliance. The study establishes that the right to a fair trial has in one way been a normative and rhetorical protective measure instead of a factor that has consistently been operationalized in order to fully protect the rights of the citizens of Pakistan through the context of Article 10-A in the wider scope of the constitutional and judicial system of the country. It is concluded in the article that the transformative potential of Article 10-A could only be achieved by long-term judicial commitment as well as legislation in line with institutional reform and executive responsibility.

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Introduction

A fair trial is a global value that is viewed as the main principle of constitutional democracy, rule of law, and human dignity. It is the processual means by which substantive justice is achieved so that the law processes are objective, transparent, and not arbitrary. The fair trial guarantee is a form of constitutional restraint that limits the power of the state in constitutional systems to ensure that individuals are not abused and also supports the confidence of the populace in the institutions of law. The process of constitutional recognition of fair trial rights and their actual implementation, in Pakistan, has been slow, contentious, and heavily influenced by political and institutional history of the country. Procedural fairness has not been affirmed as an autonomous right much of the constitutional life in Pakistan but has been implied by judicial interpretation of more general constitutional provisions including equality before the law, protection of life and liberty and a duty of the state to act within the law.¹

This oblique method of due process had the effect of disjointed and inconsistent jurisprudence. Although the instances were not frequent, courts relied on the principles of natural justice and procedural fairness to invalidate arbitrary acts, the lack of an explicit constitutional requirement restrained the unity of the doctrine and eroded the enforceability. The protections of procedures were frequently viewed as judicial values that were discretionary other than constitutional, and gave much room to executive arbitrariness and abuse of power by the administration. This shortcoming was especially prominently displayed with the Pakistan criminal justice system in which the length of pre-trial detention, investigative misconduct, slow adjudication, as well as unequal access to legal services, became the norm rather than the exceptions. The administrative tribunals and accountability tools also worked under similar terms in which they lacked procedural protection in most cases, and they were usually focused on expediency rather than fairness.²

Another constitutional change came with the introduction of Article 10-A into the Constitution with the Eighteenth Constitutional Amendment in 2010. The right to a fair trial and due process was guaranteed for the first time by the Constitution, and it was an indication that the legal system was going to be redesigned, making procedural justice one of its pillars. This phenomenon should be interpreted in the larger framework of the restoration of democracy, judicial independence, and constitutional reform that had come after years of authoritarianism and political instability. The Eighteenth Amendment did not only aim at equalizing the power of the executive and parliament, but also aimed at the reinforcement of constitutionalism through the expansion of the list of the fundamental rights and reinforcement of judicial control. Article 10-A was therefore formulated as an emblematic and substantive undertaking of justice, responsibility and legal reasonableness.³

¹ Abbas, M. M. S. (2024). PROCEDURAL JUSTICE AND THE RIGHT TO A FAIR TRIAL IN PAKISTAN.

² Shaikh, K. (2022). The Right to Fair Trial in Pakistan: An Analysis of its Implementation and International Recognition. Available at SSRN 4526164.

³ Munir, B., Khan, A. N., & Ahmed, N. (2020). An Assessment of Right to Fair Trial Under the Constitution of Pakistan, 1973: A Comparative Study of the US and Pakistan. *Global Strategic & Security Studies Review*, 5(4), 31-39.

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Although of great importance, constitutionalization of the right to a fair trial did not necessarily change legal practice. Over ten years after its enactment, the justice system in Pakistan still displays most of the structural shortcomings that Article 10-A was meant to resolve. Courts are still plagued by judicial stalling, unequal investigation practices, and the inability to access effective legal counsel, especially among the disadvantaged groups. Such endemic failures put serious doubts on the efficacy of constitutional rights without institutional capacity and political will. They also bring into more serious consideration the role of judiciary in interpreting the norms of the constitution into legal enforceable standards that cut across legal platforms.

The paper explores the judicial meaning and application of Article 10-A to determine its doctrinal development as well as its practical constraints. It claims that although Pakistani courts have progressively been applying Article 10-A to formulate procedural fairness principles, they have applied them selectively and contextually. The courts have been more willing to apply the fair trial assurance in normal civil and criminal proceedings, but in politically sensitive proceedings touching on national security, accountability and extraordinary jurisdictions, judicial restraint has been more pronounced. This disproportional enforcement weakening the universality of the right helps to increase the gap between constitutional promise and legal experience.⁴

Through an analysis of Article 10-A both as a legal document and as an institutional practice, this paper establishes the right to a fair trial in the wider context of the Pakistan constitution. It argues that fair trial rights are impossible to achieve through judicial interpretation but a combination of legislative reform, administrative restructuring, and cultural change in legal institutions is necessary. The implementation of Article 10-A is a vital constitutional chance, which can still succeed or fail depending on the ability of legal system in Pakistan to internalize due process as a norm of operation and not a rhetoric ideal.

Literature Review

The academic interest in the issue of the right to a fair trial in Pakistan is a symptom of a larger issue to constitutionalism, procedural justice and the ability of legal institutions to check the power of the state. In the academic discourse of before the insertion of Article 10-A, fair trial guarantees were mostly looked at as implied constitutional purposes based on such clauses as equality before the law, the right to life and liberty, and state-acting in conformity with the law. A common argument by legal scholars was that even in the case where due process was not explicitly found in the constitution, it was embedded in the fabric of the constitution. Courts were perceived to be the main means by which procedural fairness could be expressed, especially using the principles of natural justice like the right to hear, an unbiased hearing and a logical decision-making. Most of the literature however, has scolded this implicit approach as a way of giving rise to piecemeal and inconsistent jurisprudence in which safeguards of procedure have been overseen at the will of the

⁴ Shah, N. A. (2016). The right to a fair trial and the military justice system in Pakistan. *Journal of International Humanitarian Legal Studies*, 7(2), 330-362.

judiciary instead of clear constitutional directive.⁵

The early constitutional theory focused on the fact that the lack of an express fair trial provision undermined the effectivity of the procedural guarantees, particularly in exceptional or politically sensitive legal systems. Scholars pointed out that although the application of due process principles by superior courts at times limited the discretion of the executive, the lower courts and administrative authorities applied their authorities virtually without any procedural controls. Such a lack of correspondence between constitutional values and the practical operation of the law turned out to be a common pattern in scholarly discussions of the justice system in Pakistan. Criminal justice research indicated time and again that investigative procedures, pre-trial detention, and coercive confessions as well as excessive delays compromised the process of fairness, especially in the case of economically and socially disadvantaged defendants. Without express constitutional anchoring, scholars asserted that procedural fairness was susceptible to executive convenience and institutional inertia.⁶

Article 10-A introduced by the Eighteenth Constitutional Amendment really transformed the academic discourse. The amendment was hailed by a number of scholars as a much needed acknowledgment of due process as an independent basic right. The commentators pointed out that constitutionalizing the right to fair trial boosted procedural justice as a derived judicial principle up to a constitutional obligation. Article 10-A was often placed in comparative constitutional analysis in company with fair trial provisions in other democracies, on the basis that it conformed with international human rights standards and universal constitutional practice. This literature saw Art 10-A as a revolutionary clause that might reestablish the balance between the state power and the rights of the individual by exposing all adjudicial processes to constitutional review.

Simultaneously, critical literature warned against the fact that constitutional recognition will necessarily lead to systemic reform. Those scholars who rely on the socio-legal and institutional analysis stated that the justice system in Pakistan has structural flaws that cannot be addressed by the text of the constitution. Systemic underinvestment, poor judicial education, cumbersome case dockets and politicized enforcement were cited as obstacles to effective application of guarantees of fair trial. This school of thought stressed that constitutional rights are a matter of institutional mediation and where the institutions are weak or lack autonomy, the rights can turn into symbolic and not operational. Article 10-A in this opinion, offered a very strong normative model yet the institutional infrastructure was wanting to complete the realization.⁷

One of the strands of literature is the interpretation of the Article 10-A by the courts

⁵ Mairaj, M. U., Tullah, M. R. A., & Azeem, H. M. (2024). Fair Trial Rights of the Accused: Evaluating Compliance with International Human Rights Standards in Pakistan. *Pakistan Research Journal of Social Sciences*, 3(2).

⁶ Iqbal, M., & Iqbal, K. (2020). Shariah and Evolution of fair Trial Rights in Pakistan. *Rahat-ul-Quloob*, 130-141.

⁷ Hussain, A., Khadim, M. N., & Khanam, L. (2021). Rights of Accused at Trial Stage: An Analytical Study of Intentional Rules and Legal System of Pakistan. *Global Regional Review*, VI, 6, 307-313.

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and its inconsistency in various areas of law. According to scholars, courts of higher courts have tended to use a broad interpretation of fair trial, that it goes beyond criminal cases and includes civil litigation, administrative adjudication, disciplinary action and accountability processes. This growth has been applauded as a sign of judicial dedication to procedural justice and constitutional superiority. But critics believe that such expansion has occurred selectively and sporadically. Courts have been more restrained in politically sensitive cases, such as in cases of national security, anti-terrorism legislation, military trial or cases of high-profile accountability, and they have sometimes put expediency or institutional stability over fair trial considerations. This discriminatory application of Article 10-A has called into question the universality of Article 10-A and the dilemma of establishing prioritization of rights depending on the political environment.⁸

The other theme that is featured in the literature is the connection between judicial activism and fair trial jurisprudence. According to some of the scholars, Article 10-A has been an instrument to claim judicial power and remedy governance failures, and the post-2010 judiciary has been enabled under the provisions of Article 10-A because of the public legitimacy and constitutional reform. In this sense expansive fair trial jurisprudence can be seen as the inevitable reaction to executive vices and administrative malfunctioning. Some however, warn that too much judicial participation will tend to politicize the judicial system and weaken democratic accountability. They argue that courts which exercise fair trial principles to venture far into the policy sphere or even to control administrative action cross the boundary between adjudication and governance. This argument is indicative of larger disputes over the constitutional scholarship of Pakistan on the proper extent of judicial authority in a weak democracy.⁹

The literature also takes up much speculation on the gap between judicial pronouncement and ground-level legal practice. The results of empirical and doctrinal research are always similar, procedural injustices are quite common even with the rhetoric of progressivism in the judiciary. Among the old problems identified by the legal scholars are failure to have a timely hearing, poor access to legal assistance, insufficiency of rational decision-making in lower courts and poor adherence to the directives of higher courts. These works indicate that fair trial jurisprudence is usually abstract, and does not significantly change the practices at a trial level, but it has some influence on the appellate reasoning. The lack of linkage between the higher court jurisprudence and the lower judicial courts in performance is pointed out as an important impediment to the achievement of the goals of Article 10-A.¹⁰

Moreover, the issue of executive non-compliance in sustaining implementation gaps is noted by the academic commentary. Researchers observe that despite the

⁸ Majeed, N., Khan, A. N., & Asif, A. (2022). The Requirements of a Fair Trial in International and Pakistani Legal Framework: A Critical Analysis. *Pakistan Languages and Humanities Review*, 6(1), 193-203.

⁹ Mehmood, K., Sultan, M. S., & Azeem, H. M. (2024). An Analysis of Pre-Trial Fair Trial Rights and International Standards. *Annals of Human and Social Sciences*, 5(2), 627-637.

¹⁰ Aftab, S. (2024). Right to Privacy and Freedom of Expression in the Constitution of Pakistan. In *Comparative perspectives on the right to privacy: Pakistani and European experiences* (pp. 99-126). Cham: Springer Nature Switzerland.

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articulations of clear fair trial criteria in the courts, the application of the same is usually at the mercies of the executive branches like police, prosecutors, and prison officials. Cases of poor accountability and political influence often sabotage adherence to judicial orders thus making constitutional safeguards useless. This has made others commentators perceive that in Pakistan it is not the absence of legal recognition of fair trial rights but the failures of governance and administration that undermine them. The promise contained in Article 10-A cannot be achieved without simultaneous changes in the law enforcement, prosecution service and the correctional facilities, according to this opinion.¹¹

The other field of scientific disagreement relates to the interpretation of Art. 10-A along with extraordinary legal regimes. The research on the topics of anti-terrorism legislation, military courts, and special accountability courts begs the question of whether fair trial guarantees are the same throughout every court of adjudication. Based on their position some scholars explain that extraordinary conditions call on procedural flexibility whereas others claim that constitutional rights never should be derogable even during crises. The debate is indicative of the wider international disputes on security versus liberty, but given the situation in Pakistan, extraordinary legal regimes have been used extensively. There is a general consensus among the literature that ambiguity in the application of Article 10-A by the judiciary in these situations is one of the factors that cause uncertainty and distrust in constitutional justice.

All the literature, however, points to the agreement that Art 10-A is both a serious constitutional improvement and also, a statement of limitations of judicial reform by itself. There is a general consensus among the scholars that judicial interpretation has been progressive and inadequate to break the structural barriers which are structural. In the academic discussion, there is a growing clamor to take a comprehensive approach that combines judicial implementation with legislative change, administration reorganization, and cultural transformation of legal institutions. This article adds to the literature by combining the analysis of the doctrine with the criticism of the institution, illustrating how the interpretation of Article 10-A by the judiciary has been changing with the continuous gaps in implementation that severely still affect the achievement of procedural justice in Pakistan.

Methodology

This research paper uses a doctrinal approach of study based on the interpretation of the constitution and legal case studies. The study is mainly pegged on the review of Article 10-A of the Pakistani Constitution and the legal implication of the same by the Supreme Courts since the time of its insertion into the Constitution by the Eighteenth Constitutional Amendment in 2010. Doctrinal approach to this question is quite well adapted since the right to a fair trial as expressed in the Article 10-A has been developed by judicial reasoning as opposed to being enshrined in elaborate legislative text. The analysis is aimed at revealing the interpretive trends, law and institutional suppositions as they are manifested in judicial rulings, as opposed to quantifying the

¹¹ Khan, U. M., Ijaz, R. H., & Saadat, S. (2021). *Extending Constitutional Rights to Pakistan's Tribal Areas*. United States Institute of Peace.

results in empirical terms.

The fundamental primary data in this study is judicial rulings of Supreme Court of Pakistan and High Courts. These cases are discussed to determine how the courts have conceptualized the extent of the right to a fair trial, the criteria that they have stated and the remedies that they have applied in cases where violations have been established. Special focus is given to the rationale that is taken in cases of criminal proceedings, administrative adjudication, accountability mechanisms, and extraordinary legal regimes because it is within these settings that the judiciary is seen to exercise discretion in trading off due process with the competing interests of the state. The approach underlines uniformity and variance in judicial application, which makes it possible to evaluate whether Article 10-A has been transformed into a coherent system of doctrine or it still relies on case-specific discretion.

Beside the analysis of the doctrine, a task is also done with the help of the institutional point of view as the obstacles to implementation are evaluated. Understanding the constitutional rights as institutions, the methodology analyzes the interactions of judicial pronouncements with the realities of justice system of Pakistan, such as investigative procedures, prosecutorial behavior, capacity of the trial court, and compliance by the executive. The judicial decisions are contextualized using the secondary sources like academic commentary, law reform report and judicial speeches so as to recognize the institutional constraints that are recurrent. The methodology attempts to describe not just the text of the jurisprudence of fair trial but also the reasons why its practical usefulness is restricted by its content rather than the other way around.

Research Findings

The case law of post 2010 demonstrates that Article 10-A has been construed by the Pakistani courts to be a broad coverage of procedural justice in a broad spectrum of legal trials. It has always been pointed out by the courts that the right to a fair trial does not just limit to criminal prosecutions but also applies to civil litigation, administrative adjudication, disciplinary action, and mechanisms of responsibility. This broad reading is indicative of a judicial conception of procedural fairness as a vital element of constitutional government and that any adjudicative power must satisfy minimum requirements of procedural due process. By doing this, Article 10-A has become one of the primary constitutional provisions on which the legitimacy of legal proceedings is based.¹²

Among the most notable of those is the observation that courts have resorted to Article 10-A to strengthen key procedural protection, such as the right to notice, the right to hearing, the right to legal representation, the right to impartial adjudication, and the need to reason decisions. The superior courts have over and over again ruled that a trial that is not carried out under the provision of such safeguards is in contravention to the constitutional due process irrespective of the merits of the case. This jurisprudence has not only made the principles of fair trial more normative but has also given litigants a solid constitutional foundation over which they may appeal

¹² Haq, M., & Zafar, N. N. (2019). Mentally ill prisoners in Pakistan's criminal justice system: Analysing fair trial & due process standards. *Editor's Note*, 5(1), 1-43.

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to actions that are procedurally flawed. By so doing, the judiciary has promoted procedural fairness as a discretionary issue to a constitutional one.¹³

Nevertheless, the results also demonstrate high disparity in judicial application. Although the fair trial norms have been broadly stated by the courts, the implementation of these norms has been applied differently depending on the situation. Courts in the daily civil and criminal cases have been more willing to enforce Article 10-A with stronger arm and the proceedings that have been marred with procedural inconsistencies are shelved. Conversely, courts have been more conservative in politically sensitive matters that require national security, anti-terrorism efforts, or high profile accountability prosecutions. Judicial rationale in such cases often focuses on state interests of security, efficiency, institutional stability with the effect of a diluted fair trial guarantees. Such selectivity compromises the universality of Article 10-A and brings up the question of equality before the law.

The other important discovery is related to the low systemic influence of Article 10-A jurisprudence. Even though procedural flaws, including too much delay and inaccessibility to counsel, have been noted by the courts on numerous occasions, they remain evident at trial. The discussion indicates that judicial solutions tend to be narrow and only seek relief to individual litigants, fixing isolated problems in the structure without resolving the structural problems. To illustrate the point, even though courts have upheld the necessity of timely justice, the backload of cases has continued to be rising as a result of lack of judicial capacity, procedures that are old and administrative inefficiencies. This indicates that Article 10-A has served better as a remedial device in adjudicating cases in appellate courts than as an agent of change in the system.¹⁴

The results also suggest that the lack of compliance among the executives also compromises the application of fair trial standards greatly. In places of a court delivering a clear directive based on Article 10-A, it relies on the implementation by the executive authorities e.g. the police, prosecutors and prison officials. Lack of effective mechanisms of accountability, political influence and resource limitation usually lead to sub-optimal or delayed compliance and the practical impact of judicial pronouncements is reduced. This disjuncture between verbal articulation by the judiciary and executive actions demonstrates the structural constraints of judicial authority in its absence of institutional change.¹⁵

Lastly, it can be concluded that the analysis has shown that Article 10-A has helped to achieve a more rights conscious constitutional dialogue despite its more lopsided practical effects. Courts are citing the principles of fair trial as a reference to determine the validity of legal proceedings, and litigants are regularly citing Article 10-A in constitutional habeas corpus. This has increased the awareness of procedural justice and strengthened the symbolic significance of due process in the culture of the

¹³ TARIQ, A. (2019). *RIGHTS OF PRISONERS: A COMPARATIVE STUDY OF SHARI'AH & LAW WITH SPECIAL REFERENCE TO PAKISTANI STATUTES AND CASE LAW* (Doctoral dissertation, The International Islamic University).

¹⁴ Waseem, M. A. (2019). Impact of judicial activism in Pakistan. *Pakistan Study Centre*, 9(1), 267-295.

¹⁵ Siddique, N. (2021). Prevailing Practice of Judicial Activism in Pakistan: A Legal Analysis in the Light of International Standards. Available at SSRN 3877964.

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Pakistani constitution. Nevertheless, this symbolic improvement will not be connected to the experience of justice unless there is a sustained struggle to match the legal institutions with the constitutional norms.

Discussion

The constitutional commitment to procedural justice as interpreted by the judiciary in Article 10-A meets the structural limitations that inhibit its application in the Pakistani legal system. Courts have since its introduction come to view fair trial guarantees as the core of constitutional governance, with a focus on the fact that legality cannot exist outside of procedural integrity. This change has empowered the normative legitimacy of due process and has facilitated judicial review of adjudicative disciplines in a wide range of legal fields. But, the unequal application of the Article 10-A provides a picture of a conflict between the constitutional idealism and the institutional reality. Although judicial utterances express sound principles of fairness, their implementation to a uniform legal practice will still depend on the institutional capacity, executive adherence and the political environment.¹⁶

The inability of the judiciary to bring about a systematic reform of the system in a case-by-case adjudication is one of the most important issues demonstrated by the Article 10-A jurisprudence. Individual litigants can have their procedural violations detected and relieved by a court, which does not have the structural means to restructure investigative procedures, administrative operations, and resource distribution. This is especially the case in the criminal justice system, which violations of a fair trial are usually not incidental but structural. Extended pre-trial detentions, the lack of proper legal counsel, and the slowness of adjudication remain, even after judicial notices have acknowledged more than once that these practices are simply incompatible with constitutional due process. This implies that although Article 10-A has reinforced the constitutional discussion, it is yet to change the institutional culture of justice delivery.¹⁷

The selective application of fair trial principles to politically sensitive cases is also another problem that makes Article 10-A better suited to the necessity of judicial restraint in these situations in terms of national security, institutional stability, or the need to pursue political objectives. Although strategic factors deserve some caution in other instances, failure to establish uniformity in enforcement poses the danger of bringing down the universality of constitutional rights. In rare situations where the procedural guarantees are eroded, it gives an impression that the rights of fair trial are conditional, not absolute, which undermines the belief of the citizens on the constitutional justice. The difficulty to the judicial system is balancing constitutional faithfulness and pragmatic government and making sure that due process does not get lost on the alter of expediency.¹⁸

The more general constitutional meaning of Article 10-A jurisprudence is the re-

¹⁶ Khalil, N., Rehman, H. U., & Shah, S. A. (2021). Judicial Activism Under Article 184 (3) of the Constitution of Pakistan-1973. *The Dialogue*, 16(4), 58-71.

¹⁷ Mullally, S. (2009). A Long March to Justice: A Report on Judicial Independence and Integrity in Pakistan. *International Bar Association, Human Rights Institute*.

¹⁸ Zaman, S., & Zia, M. (2012). *Women's access to justice in Pakistan*. Working Paper th.

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definition of the alliance between the state and the individual. Article 10-A with its constitutionalization of procedural fairness hopes to create a balance shift towards individual rights and legal accountability. This desire is, however, unfulfilled without the organized institutional change. Even though the role of the judiciary is important, it cannot replace legislative clarity, administrative competence and political dedication to the rule of law. Article 10-A is then a victory and a warning of the limitations of the constitutional judging operation in se.

Recommendations

A multi-dimensional strategy is necessary to establish the connection between the constitutional promise on the one hand and its real implementation on the other hand. The interpretation of Article 10-A by courts should be coupled with the formulation of articulate procedural guidelines that can be used by the inferior courts and tribunals to apply consistently. The higher courts must define the standardized criteria of assessment to determine the violation of the fair trial that will decrease the difference and increase predictability in the adjudication process. Procedural justice is an operational need of judicial training programs, and as such, programs ought to ensure that the various levels of judges also internalize constitutional due process as a binding obligation and not a discretionary ideal.

Legislation needs to be changed so that the procedural laws can be harmonized with the constitutional requirement of the Article 10-A. The current criminal and administrative procedures are to be reconsidered to exclude the aspects that allow arbitrariness or unnecessary discretion. The statutory protections of evidence, bail, and adjudicatory periods need to be enhanced to mirror the constitutional concept of fairness. Simultaneously, judicial infrastructure, case management and legal aid services, heavily dependent on administrative spending is essential to minimizing delays and enhancing access to justice, especially by marginalized populations.

Mechanisms of executive accountability should also be enhanced so as to guarantee adherence to fair trials. Constitutional guarantees should be operationalized through independent control over law enforcement agencies, open prosecutor policies and successful prison reform. Without the executive investment, court statements will mostly be lips reading and larynx speaking. Lastly, civic legal education must also be increased to inform the citizens of their rights to a fair trial, which will give them the power to insist on procedural justice and will make the constitutional culture of responsibility more prominent.

Conclusion

Article 10-A is a historic move in the constitutional change of Pakistan as the right to fair trial and due process is declared to be of fundamental rights. Since 2010 judicial interpretation has provided substantive meaning to this provision to widen the sphere of procedural justice and strengthen the judiciary as a protector of constitutional norms. Nevertheless, the weakness of constitutional recognition without institutional reform can be identified by continued gaps in implementation. Article 10-A ensures the right to a fair trial as an aspiration, which can only be wrought by the spectre of long-term judicial activity, legislative consistency, and administrative change. The gap that exists between constitutional text and lived legal experience entails a holistic

approach which incorporates judicial interpretation and structural reform. Such integration alone can make Article 10-A the promise it can be as an element of constitutional democracy and rule of law in Pakistan.

References

- Abbas, M. M. S. (2024). PROCEDURAL JUSTICE AND THE RIGHT TO A FAIR TRIAL IN PAKISTAN.
- Aftab, S. (2024). Right to Privacy and Freedom of Expression in the Constitution of Pakistan. In *Comparative perspectives on the right to privacy: Pakistani and European experiences* (pp. 99-126). Cham: Springer Nature Switzerland.
- Almohawes, M. (2024). The Obstacles to the Right to a Fair Trial under the International Law: A Case Study of Al-Anfal and Srebrenica Genocide Trials. *Access to Just. E. Eur.*, 67.
- Clooney, A., & Webb, P. (2020). *The right to a fair trial in international law*. Oxford University Press.
- Constitution of the Islamic Republic of Pakistan, 1973.
- Eighteenth Constitutional Amendment Act, 2010.
- Haq, M., & Zafar, N. N. (2019). Mentally ill prisoners in Pakistan's criminal justice system: Analysing fair trial & due process standards. *Editor's Note*, 5(1), 1-43.
- Hussain, A., Khadim, M. N., & Khanam, L. (2021). Rights of Accused at Trial Stage: An Analytical Study of Intentional Rules and Legal System of Pakistan. *Global Regional Review*, VI, 6, 307-313.
- Iqbal, M., & Iqbal, K. (2020). Shariah and Evolution of fair Trial Rights in Pakistan. *Rahat-ul-Quloob*, 130-141.
- Khalil, N., Rehman, H. U., & Shah, S. A. (2021). Judicial Activism Under Article 184 (3) of the Constitution of Pakistan-1973. *The Dialogue*, 16(4), 58-71.
- Khan, S. A. (2021). *Judicial Independence in Pakistan: A Case Study of Lawyers' Movement, 2007-2009*. West Virginia University.
- Khan, U. M., Ijaz, R. H., & Saadat, S. (2021). *Extending Constitutional Rights to Pakistan's Tribal Areas*. United States Institute of Peace.
- Koprivica Harvey, A. (2018). *Right to a Fair Trial in Civil Law Cases*. Max Planck Encyclopedia of Comparative Constitutional Law, OUP.
- Mairaj, M. U., Tullah, M. R. A., & Azeem, H. M. (2024). Fair Trial Rights of the Accused: Evaluating Compliance with International Human Rights Standards in Pakistan. *Pakistan Research Journal of Social Sciences*, 3(2).
- Majeed, N., Khan, A. N., & Asif, A. (2022). The Requirements of a Fair Trial in International and Pakistani Legal Framework: A Critical Analysis. *Pakistan Languages and Humanities Review*, 6(1), 193-203.
- Mehmood, K., Sultan, M. S., & Azeem, H. M. (2024). An Analysis of Pre-Trial Fair Trial Rights and International Standards. *Annals of Human and Social Sciences*, 5(2), 627-637.
- Mullally, S. (2009). *A Long March to Justice: A Report on Judicial Independence and Integrity in Pakistan*. International Bar Association, Human Rights Institute.
- Munir, B., Khan, A. N., & Ahmed, N. (2020). *An Assessment of Right to Fair Trial Under the Constitution of Pakistan, 1973: A Comparative Study of the US and*

Online ISSN

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Print ISSN

3007-3189

<http://amresearchreview.com/index.php/Journal/about>

- Pakistan. *Global Strategic & Security Studies Review*, 5(4), 31-39.
- Newberg, P. Judging the State: Courts and Constitutional Politics in Pakistan.
- Nouman, R., & Minhas, R. (2024). Police interviewing practices in Pakistan: A critical outline. In *Routledge International Handbook of Investigative Interviewing and Interrogation* (pp. 270-281). Routledge.
- Shah, N. A. (2016). The right to a fair trial and the military justice system in Pakistan. *Journal of International Humanitarian Legal Studies*, 7(2), 330-362.
- Shah, S. A. *Constitutional Law of Pakistan*.
- Shaikh, K. (2022). The Right to Fair Trial in Pakistan: An Analysis of its Implementation and International Recognition. Available at SSRN 4526164.
- Siddique, N. (2021). Prevailing Practice of Judicial Activism in Pakistan: A Legal Analysis in the Light of International Standards. Available at SSRN 3877964.
- TARIQ, A. (2019). *RIGHTS OF PRISONERS: A COMPARATIVE STUDY OF SHARĪ 'AH & LAW WITH SPECIAL REFERENCE TO PAKISTANI STATUTES AND CASE LAW* (Doctoral dissertation, The International Islamic University).
- Waseem, M. A. (2019). Impact of judicial activism in Pakistan. *Pakistan Study Centre*, 9(1), 267-295.
- Zaman, S., & Zia, M. (2012). Women's access to justice in Pakistan. Working Paper th.