

**Right to Fair Trial under Article 10A: Practical Implementation in the Criminal Justice System of Pakistan**

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**ABSTRACT**

*One of the most crucial aspects of any justice system and one that is closely related to the rule of law is right to a fair trial. This right is mentioned in such international documents as the universal declaration of human rights and the ICCPR. Pakistan altered its Constitution in 2010 which was Article 10A or its 18th Amendment. This move was done to show that Pakistan wants to have a good legal procedure, as the existing laws were in line with the international laws on human rights.*

*In this paper I am going to analyze the Article 10A in more detail. It discusses that this article has made Constitution of Pakistan one of the strongest in the world in respect of safeguarding the basic rights. The study focuses on the interpretation and understanding of fair trial of important cases by the courts in Pakistan, and how it works in the criminal justice practice. The protection of such rights as the presence of an unbiased judge and the presumption of innocence until proven guilty have been large constituents of the role played by courts. They have also opposed trial of civilians by military tribunals*

*But still, a lot of problems remain. Article 10A is not fully functioning due to court delays, police brutality and insufficient legal assistance. The paper concludes that as much as Article 10A is a good ground, it could only be improved by enhancing reforms and strong supervision to ensure justice is fair and accessible to all in Pakistan.*

**Keywords:** *Right to Fair Trial; Article 10A of the Constitution of Pakistan; Eighteenth Amendment; International Human Rights Law; Judicial Interpretation; Criminal Justice System; Military Courts and Civilian Trials; Access to Justice and Legal Reforms*

**INTRODUCTION**

The concept of fair trial implies that the legal process is fair, impartial and conducted in a proper manner. This is one of the basic rights which is considered by every modern justice system. This is also supported by international laws. As an illustration, the United Declaration of Human Rights (1948) in Article 10 as well as the International Covenant on Civil and Political Rights (ICCPR) in Article 14 assures a fair and public hearing by an independent court. These global commitments to Pakistan were made many years ago. The right to a fair trial was not mentioned in the Constitution of the country in 1973, however, clearly enough.

This came to an end in the year 2010, when the Parliament enacted the Eighteenth Amendment. This amendment created in the Constitution Article 10A according to which the right to a fair trial became a part of enforceable law. It is now applicable to civil as well as criminal cases. Through this move, Pakistan became one of few states which expressly state rights to a fair trial in their constitutions.

Lawyers applauded the new Article 10A. They regarded it as a progressive and intelligent step. It amplified the rights of individuals as provided by the Constitution. The 1973 Constitution was perceived by many to

be a powerful rights-based document. Inclusion of Article 10A revealed the intention of Pakistan to promote justice and rule of law. It also responded to the international requirements and the needs of the people in the area to have more just systems of the law.

This occurred following years of repressive and dictatorial leadership. Elected leaders were interested in restoring and ensuring fundamental liberties. Article 10A is written in general language. It deals with both civil rights and criminal cases. Simply stated, it provides fairness in all the proceedings of the law not only in the criminal trials. This is comparable to the way of the European Convention on Human Rights which safeguards the right to fair trial. It is against this reason that the Constitution of Pakistan has become one of the most powerful ones in terms of promoting due process.

Nevertheless, the fact that a right is written in the Constitution does not necessarily make it a reality to all. Article 10A was a great step, however, it did not address the actual issues in courts that people have. The true test is its interpretation by the judges and its application by the police, lawyers and courts in every day life.

In this paper, a closer look at the meaning of Article 10A and its relevance is considered. It examines its interpretation and application in the courts and how it is worked out in the criminal justice system. The paper brings out significant advances in judicial rulings but also identifies grave loopholes between the law and how things are in practice.

In the subsequent sections, I will discuss the contents of Article 10A and the comparisons between the article and international fair trial requirements. Thereafter, I will research on prominent court decisions in Pakistan to determine the meaning of a just trial. And lastly, I will consider the application of this right in actual criminal cases. The reforms have served to assist, yet the fact that the nation of Pakistan is still shrouded with big problems in terms of delay of trials, poor conditions and resource deficiency still hinder the promise of fair justice in the country. Justice should not just be done it should be seen to be done to work.

## **METHODOLOGY**

The research will take a qualitative, doctrinal research methodology of the law research grounded mainly on secondary data to study the application of Article 10A in the Pakistani criminal justice system and its scope. It bases its search on the logical examination of primary legal sources, such as the Constitution of Pakistan 1973 (particularly, Articles 4, 8, 9, 10, 10A, 13 and 14), procedural and substantive criminal laws such as the Code of Criminal Procedure 1898, Qanun-e-Shahadat Order 1984, Anti-Terrorism Act 1997, Investigation for Fair Trial Act 2013, Pakistan Bar Council Free Legal Aid A purposive sample of the prominent Supreme Court/High Court decisions (such as Sharaf Faridi, Azizullah Memon, the contempt cases of Yousaf Raza Gillani as well as recent decisions regarding military trials of civilians) are analyzed to trace the judicial interpretation of Article 10A and other relative provisions of fair trials, including independence of the judiciary, presumption of innocence, right to counsel, public hearing and speedy trial. These findings of doctrine are fleshed out and critiqued with secondary literature, such as law journal articles, research reports (e.g. RSIL), commentary of human rights organisations and authoritative media outlets, which gives an empirical context to such issues as police abuse, torture, forced confessions, delays and case backlogs. It is based on this method a synthesis of content analysis and normative comparison, whereby the constitutional and judicial standards of Pakistan are compared to international standards of a fair trial, and the standards are applied to the practical operation of the criminal justice system. The article has some limitations thwarts in the use of published material, incompleteness or underreporting of empirical

data, and a lack of focus in lower courts to conduct a detailed fieldwork but still provides a solid foundation on which to estimate the progress and the deficiencies in the application of Article 10A.

#### **Art. 10a: The Right to Fair Trial in the Pakistani Constitution.**

According to Article 10A of the 1973 Constitution of Pakistan, each citizen has a right to a fair trial and due process, whether concerning the rights, duties or criminal prosecution. This amendment entered the article by the 18 th Amendment in 2010, and made the right to fair trial a fundamental and enforceable right. Here are the main points:

##### **Covers the Civil and Criminal Matters**

Article 10A is not limited to criminal cases. It also imports civil disputes and even decisions involving government bodies that have an impact on the rights of the people. The Article is very general and is inspired on international laws such as Article 6(1) of European Convention on Human Rights. It ensures that people get a fair hearing with many types of legal matters.

##### **Flexible but Not Detailed**

The Constitution doesn't enumerate all the pieces of information that makes a fair trial. Instead, it grants the courts a freedom to define it by reference to the international standards and contemporary practices of law. The Supreme Court has indicated that the lawmakers intended the language to be broad for the courts to interpret it using common sense and fairness. Courts have said fair trial includes things such as a judge that is impartial, an opportunity to respond to charges, receiving notice of charges, enough time to prepare a defense, open court hearings and reasons for decisions. It is also related to other rights such as the presumption of innocence (Article 13) and against self-incrimination.

##### **In line with International Standards**

Article 10A is closely similar to fair trial standards in the world. Pakistan signed the ICCPR in 2010 which contains Article 14 which stipulates the provision of fair trial as being informed about the charges, given a lawyer, the right to cross-examine witnesses etc. Adding Article 10A did help to make Pakistan's Constitution in accordance with the ICCPR and the Universal Declaration of Human Rights (UDHR). Many experts state that Pakistan's Constitution now represents most of the main parts of these international documents. By including this article, Pakistan kept promises that it made under international law.

##### **Assists Rule of Law and Human Dignity**

The right to a fair trial is not merely the legal rule it is supporting larger values such as the rule of law and human dignity. The Supreme Court has said this right is connected directly to Article 14 of Constitution that protects the dignity of every person. A fair trial honors the value of human lives. On the other hand, unfair trials undermine public confidence in courts and adversely affect the image of judges. By the provision of fair trials, Pakistan made it clear that no situation or state interest is to override the need for justice and fairness.

##### **Before Article 10A**

Before Article 10A, there were some fair trial protections available in regular laws of Pakistan. The Criminal Procedure Code of 1898 and the Qanun-e-Shahadat (Law of Evidence) from 1984 states that a person is innocent until proven guilty, the prosecution must prove the case and that witnesses must be cross-

examined. Article 10 of the Constitution already provided some rights in the stage of arrest such as to know the charge, to meet a lawyer and to be brought to the magistrate without any delay. Others include freedom from torture, freedom from being punished under old laws and protection from being tried twice for the same offence.

### **What Changed with Article 10A**

The important development in Article 10A is that the notion of a fair trial was brought out of the regular law into the Constitution. Now, if someone's right to fair trial is infringed upon like not being given a chance to defend themselves they can challenge it as a direct constitutional issue. Article 10A works alongside the existing laws but gives rights of fair trial a higher legal status. If any of its laws go against it, those laws become invalid after Article 8 of the Constitution.

### **Judicial Interpretation and Case Law Article 10A**

Since Article 10A became part of the Constitution, courts particularly higher courts had key role with regards to explaining what it means. Judges have played a role in defining the right to a fair trial and due process in a variety of important decisions.

Even before 2010 the Supreme Court had also supported fair trial rights on the basis of earlier constitutional provisions. For instance, in the case on the Sharaf Faridi case (1989), the court stated that there is a right to access to justice as part of the right to life under Article 9. This meant people had a right to be given a fair trial before a court which was independent. Later, in Azizullah Memon (1993), Supreme Court held that the executive controlled tribunals were unconstitutional. The court emphasized that justice had to come from independent judges not from government controlled panels. These early cases warped the foundation of Article 10A.

After 18th Amendment was added to the Article 10A in the year 2010, courts started using it directly at their rulings. They have extended the protections of fair trial in several major ways:

### **Right to Be Heard**

Courts have made it very clear that no one should be judged or punished without being given a fair chance to respond. The Supreme Court has stated that being heard is a fundamental component of the due process under Article 10A. Anyone affected by a decision must get a proper notice and an opportunity to present his or her side. Making decisions without hearing both sides goes against the right of the consumer to a fair trial. This rule is also applicable for administrative actions and it is not limited to trial in court cases only making Article 10A wider in scope.

### **Impartial Judges and Judicial independence**

An unpartisan judge is a prerequisite for a reasonable trial. The Supreme Court has said that 'justice must not only be done it must also be seen to be done'. Judges shall also be required to recuse themselves in a case if there is any possibility that there may be potential personal interest or bias. For instance, in the case of Yousaf Raza Gillani in contempt of court (2012), the court relied on Article 10A to emphasize the need for an independent bench. The principle that "no one should be a judge in his or her own case" is now a fundamental element of the rights of fair trial. In a major decision in 2023, the Supreme Court decided that the civilian could not be tried by military courts under the Army Act. The court stated that military tribunals have no judicial independence and this also violates Article 10A. This ruling returned those cases to regular courts, and supported that the only proper civilian courts are capable of handling criminal trials fairly.

### **Presumption of Innocence and Presumption of Guilt of Burden of Proof**

The courts have also stated that every person is presumed innocent until proven guilty. The Supreme Court sees this as the backbone of criminal justice and today this is clearly safeguarded under Article 10A. Courts discredit confessions made under duress or torture and nullify verdicts in which the government wrongly placed the burden of proof on the accused. The state must prove guilt by beyond reasonable doubt. If the trials are conducted in secret or if evidence is concealed, the courts perceive it as infringement of Article 10A. High Courts have also overturned administrative decisions in which the accused has not received a fair hearing or opportunity to cross-examine witnesses.

### **Important Right to Legal Representation**

Article 10A strengthens the right to the commission of a lawyer, especially for people laden with criminal charges. Article 10 provides some degree of protection during arrest and detention already, but courts have now construed Article 10A as affording the state a duty to provide legal help in particular to poor or vulnerable people. If a person is not able to afford a lawyer, then the court should assign a lawyer at the expense of the state to ensure that a fair trial takes place. Pakistan has had the free legal aid rules since 1999, however, the reach and quality of these rules continues to vary. Even so, lack of legal help is now considered by the courts to be a serious violation of the rights of fair trial. This is at the level of world standards, as they request legal aid in serious cases leading to prison.

### **Timely Trial**

As we all know, "Justice delayed is justice denied". Courts now look at having a timely trial as part of the right to a fair trial. While article 10A doesn't specifically address speed, the Supreme Court has made connections between delays in trial and violations of the rights of the accused. In a judgement in the year 2025 Mansoor Ali Shah, also a judge stated that delays cause serious harm to justice. He contended that Articles 4, 9 and 10A cumulatively approved of the right to speedy trial. If a verdict arrives too late, it is of no value even if the decision is fair. This experienced view is now pushing reforms for the reduction of delays and speed up the legal process.

### **Conclusion on Judicial Role**

Through the passage of years of rulings, the courts have been able to build a mighty edifice built around the Article 10A. They have confirmed important rights of fair trial including:

1.      The right to a neutral judge
2.      The right to be heard
3.      The presumption in favor of innocence
4.      Public hearings
5.      Reasoned decisions
6.      The right to appeal

These principles are present day fixed parts of constitutional law of Pakistan. Courts get a hand in enforcing them. They have overturned laws that they found to be unfair and have consulted on how lower courts were

to protect rights to fair trial. For example, courts require the accused persons to be brought before them and trials to be judged without delay.

Article 10A is no longer just words on paper it is an actual and living right. People use it regularly in the challenging trials which are not fair and even courts use it to protect the justice. In the next section, we will look at the functioning of this right during the daily operations within the criminal justice system. This includes the successes, and the challenges that still remain.

### **Implementation of Criminal Justice system of Pakistan: Progress, Problems**

Converting the promise in Article 10A into reality needs time. While some measures have been taken to increase the level of fair trial in Pakistan, there are some serious issues that are on the way. This section explores what has improved and what is still problematic.

### **Legal Reforms That Help Ensure Fair Trial**

After the constitution attained Article 10A, some laws were passed in favor of the due process. For example under Investigation for Fair Trial Act 2013, the government is allowed to resort to wire tapping for investigating terrorist activities but with the permission of a judge. This is to illustrate that even in the case of terrorism, there are laws that are rules and there is a privacy. Lawmakers have also reformed some of the criminal law, such as protection of witnesses and improvement in handling of evidence. But these reforms have been slow and out of order.

### **Administration and Reform of the Courts**

Higher courts have brought about some changes in order to deal with delays and inefficiencies in the system.

They are aware that a slow or disorganized trial may infringe on the right to a fair hearing. The importance of speedy justice was brought forward in the National Judicial Policy 2009. Later efforts were concentrated on clearing case backlogs and not needless delays. In 2025, the Supreme Court adopted new processes of using case management tools, digital filing systems, and the "fast track" of older cases. The Court referred to systems in nations such as Singapore and the UK as examples. These reforms are supposed to make trials not only fair but timely as well.

### **Legal Aid and Legal Access to Lawyers**

Pakistan has established systems to help poor defendants obtain legal assistance and it helps eliminate one major obstacle to determine a fair trial. The Bar Council Free Legal Aid Rules 1999 provided for the establishment of groups to offer free legal aid. Courts frequently order trial judges to select defense lawyers for serious crimes for those accused of these charges that cannot afford. Some non-government organizations also provide legal support. While coverage is not comprehensive, such programs are helping vulnerable people and fulfill the promise of Article 10A.

### **Changes to the Rules of Confession and Evidence**

Courts have now read the law with the help of Article 10A. For example, the Anti-Terrorism Act 1997 previously permitted confessions to the police to be used in court, in spite of the fact that it is against the usual rules. Today, courts are more judicious. They generally don't believe police confessions without other supporting evidence. This change is in recognition of the risk of abuse and forced confessions. Courts also



oppose trials that are held without the presence of the accused, unless certain strict measures are taken. These changes assist in bringing the law closer to the standard of fair trial.

### **Progress Is Real, but Big Challenges is still present**

Pakistan has tried to reduce tax laws and practices to some extent as it points to Article 10A. Police, lawyers and judges now at least recognize the importance of fair trials. But a number of serious problems keep the system back.

### **Major Challenges**

#### **Police Abuse & Handling of an Arrest**

The most significant violations of fair trial rights occur in the police investigation. Police sometimes arrest people without reason, keep them for long time without telling them why, and even torture them to extort confessions. These actions violate Articles 10, 14 and are contrary to the spirit of Article 10A. By law, police are required to bring suspects before a magistrate within 24 hours but in practice, police tend to delay or keep the arrest a secret. Many suspects are being denied access to lawyers, or don't even know what they are accused of. Forced confessions and falsified evidence are still common. Courts dismiss evidence for torture when they are discovered but often the damage is done early on in the process. Magistrates approve police detention without even seeing the suspect or even asking about abuse. While the law says trials have to be fair, and with poor or vulnerable suspects, such rights are not always being protected due to weakness in the law enforcement.

#### **Delays and Monster Backlogs in the Courts**

Trials often drag out for years in Pakistan. The courts are overwhelmed. By 2025 more than 2.2 million cases were pending in all levels of the court system, including 56 000 cases in the Supreme Court. It's five to ten years or more for a trial to be completed. Many individuals spend that time in jail, without bail and without a verdict. In 2025 Supreme Court held that the long delays amount to a violation of Article 10A. Justice delayed is really justice denied. These delays hit the poor people hardest they can't afford the years of legal costs or lost income. The reasons are: too few judges, lawyer strikes, weak scheduling, strong people stalling cases on purpose. While at least some reforms have begun, tackling the culture of delay is one of the most difficult problems.

#### **Unequal Power of Prosecution and Defenses**

Fair trials require equal power between the prosecution and the defense but that balance doesn't exist in Pakistan. The state has more money, more resources and experienced lawyers. Many wrongly convicted people can't afford any lawyer, or they get assigned legal aid lawyers that are overworked and underpaid. Assigned lawyers are sometimes inexperienced or unmotivated. Also, prosecutors don't give the defense what they need to see when they are supposed to! Old habits are hard to break. In case of high profile, a role of the media can also destroy fairness. Courts have been alarmed that public comments as well as biased reporting can sway trials. In order to remedy this imbalance, Pakistan needs to invest in more robust public defender systems and make sure that judges are empowered to control the trial process in a fair manner.

### **Parallel Justice Systems That Fail to Follow the Rules**

There are some courts and informal systems in shadow of the normal justice system. For example, military courts have tried the suspects of terrorism between 2015 and 2019, often in secret, without public hearing and adequate appeals. These courts raised very serious issues of balancing security and the right to a fair trial. In 2023 this judgment was confirmed by the Supreme Court Judges saying that putting people on trial in military courts was not legal and went against Article 10A. That decision was a backwards from the concept of special justice

Other types of unofficial courts such as tribal jirgas or special drug courts are still present in certain areas. These forums very often don't follow normal trial protections. While the courts have criticized them, putting an end to their practice completely and bringing all legal matters under the Constitution is still a work in progress

### **Conclusion of the Section**

Pakistan's criminal justice system has made real progress towards fulfilment of the promises of Article 10A. Laws have been revised and higher courts have established clear understandings of what a fair trial should look like. Many legal professionals are now considering fair trial rights as an essential, not just an idea.

But there is still a big gap between what the Constitution states and what happens in real life. Lack of funds, an obsolete police system, and a poor system of accountability all make it difficult to fully provide fair trials. A study of arrest records in 2025 revealed that there is still a lot of people enforced to violate their rights of fair trial despite such protection in the law.

In closing this gap, Pakistan must carry on its efforts to engender reform, enhance the training of the police, equip judges with the tools they needed to do their job, and most of all leadership with a strong commitment to justice.

### **CONCLUSION**

Article 10A has given real power to the constitutional structure of Pakistan. By expressly being aware of the importance of fair trial and due process as it upholds fundamental values such as justice, democracy and human rights. Many legal experts have welcomed this move and say that it brings Pakistan in line with the best in the world. It also gives citizens a strong legal way in which they can demand justice.

Pakistan's higher courts have given a serious look to Article 10A. In this way, they've used it to strike down unfair laws, for the promotion of independent and unbiased courts and application of principles of natural justice. Court decisions through the years show judges acknowledge that the rights of fair trial are central to the criminal justice system and that it plays a crucial role in the maintenance of the rule of law.

Still, the process is not over. Many cases highlight the difference between what the law will promise and what people will receive. Courts have time and again warned that justice should be both fair and timely for justice is ruined if even there is any delay in a case. The decision of the Supreme Court this week to end military trials for persons who are not military personnel is a demonstration of how the judiciary is trying to juggle state security and basic rights.

For Article 10A's promise to fully materialize, there is much action that needs to be taken on different fronts. Police practices have to change torture and illegal detentions have stop. The government must increase the funding of legal aid to have proper representation of the poor defendants. Technology should



be utilized to deal with cases better and reducing the delays as much as possible. Legal reforms should be aimed at making the rights more comprehensible and the wrongdoers are also made to face the book of law. The Supreme Court has already spoken in favour of bold reforms and the judiciary has shown great willingness to take the lead. Now, other arms of the government have to follow.

Article 10A is a mighty promise Few constitutions provide such a clear and broad guarantee of the rights of fair trial. If enforced properly, it could make Pakistan's Constitution an example of protection of justice for the whole world. Since 2010, this right has aided in the improvement of the legal system and the protection of citizens while there are still challenges ahead. With sustained and increased effort, and respect for the law, Pakistan can bridge the gap between what the law promises and justice delivers.

The right to a fair trial, which is now a part of the Constitution, should govern all aspects of the justice process. All the branches of government, judges, lawmakers, police, and officials, must endeavour to make this right a reality for all those who have to seek justice in the courts of Pakistan.

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