

## **A Comparative Study of Fundamental Rights of the Accused in Police Custody: A Study of Pakistan**

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**Abstract:** This study deals with the “A comparative study of fundamental rights of the accused in police custody”. This study is based upon the norms of the criminal law is that the “thousand accused can punished but one innocent shouldn’t be punished”. The work would like to explicit that One of the basic tenets of our legal system is the benefit of the presumption of innocence of the accused till he is found guilty at the end of a trial on legal evidence in a democratic society even the rights of accused are untouchable. The Investigation for Fair Trial Act, 2013, permits the use of new methods in collection of evidence and also bridles arbitrary powers from being used. However, being dissimilar to the essence of the Constitution, 21st Amendment was made to adopt Pakistan Army Act, 2015 in order to control the extremism. The key purpose of the study is to assess how far the efforts for the enforcement of right to fair trial in Pakistan are sufficient? It actually allows governments to exercise their powers in a proper way. It is an essential fragment of the fair justice system which cannot thrive without ensuring fair trial in the society. Hope the study provides an advanced comparison on rights of arrested and accused person in police custody.

**Keywords:** Fundamental Rights; Democratic Society; Constitution; Amendment; Pre-trial

### **1. Introduction**

Fundamental rights are the inalienable human rights guaranteed by the Constitution of that State. The fair trial and due process of law is regarded as the fundamental right which has been recently incorporated in the Constitution of Pakistan through eighteenth amendment to the Constitution. The said right has been provided in the Constitution of USA as well. It actually allows governments to exercise their powers in a proper way. It is an essential fragment of the fair justice system which cannot thrive without ensuring fair trial in the society. The right to fair trial means equilibrium between power of government and rights of general public. The right to a fair trial is a norm of international human rights law designed to protect individuals from the unlawful and arbitrary curtailment or deprivation of other basic rights and Freedoms. It enumerates three types of rights pre-trial, during trial and post-trial which may be considered as the essential ingredients of Fair trial. Pre-trial rights include prohibition on arbitrary arrest and detention, right to know the reasons for arrest, the right to legal counsel and right to prompt appearance before the judge to challenge the legality of his arrest.

Whereas during trial rights comprise Equal access to, and equality before, the courts, the right to a fair hearing, right to a presumption of innocence, right to prompt notice of the nature and cause of criminal charges, right to an interpreter and right to examine witnesses. Post-trial rights include the right to appeal and right to compensation for miscarriage of justice. Human rights constitute a set of norms governing the treatment of individuals and groups by states and non-state actors on the basis of ethical principles. These norms are incorporated into national and international legal framework, which specify mechanisms and procedures to hold the duty-bearers accountable and provide redress for alleged victims of human rights violations. Unequivocally invoking the term “human rights”(which is often referred to as “human rights discourse” or “human rights talk”).

Human rights have in common an ethical concern for just treatment, built on empathy or altruism in human behavior and concepts of justice in philosophy. Furthermore, other basic human rights, guaranteed by the same or other Conventions, may also influence the fairness of proceedings. Ethical and religious precepts determine what one is willing to accept as properly a human right. Such precepts are typically invoked in the debates over current issues such as abortion, same-sex marriage, the death penalty, migration, much as they were around slavery and inequality based on class, gender or ethnicity in the past. Enlightenment philosophers derived the centrality of the individual from their theories of the state of nature. In moral reasoning, the expression “human rights” is often not distinguished from the more general concept of “rights,” although in law a “right” refers to any entitlement protected by law, the moral validity or legitimacy of which may be separate from its legal status as an entitlement.

### **1.1. Fundamentals Rights and Criminal Process**

International human rights instruments, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, provide for a number of fundamental human rights that have interrelated links to criminal process, as well as encompassing humanitarian values regarding the inherent rights of individuals as human beings to physical integrity, freedom and self-determination. While the rule of law dictates that the state is bound by the limits the law sets upon it, human rights conventions provide the extra guarantee that, in the final event, state activities regarding criminal justice that infringe upon the fundamental rights of individuals be scrutinized by an impartial and independent tribunal, a principle that is explicitly guaranteed by the ICCPR (Article 9) and by the ECHR (Article 5) with regard to the deprivation of liberty. The history of the privileges provided to an accused is extended back to the 18<sup>th</sup> when these rights were mainly restricted for the period of the ongoing trial only. Later in 20<sup>th</sup> century, many countries broaden the time even before and after the trial. There are following common rights that shall be provided to the accused in the police custody:

- ❖ All persons are equal before law and courts. There should be no discrimination on the basis of religion, color, ethnicity, nationality, wealth, or any other social status.
- ❖ An unprejudiced, speedy, and fair trial must be provided to the accused and should not be detained in the custody for unnecessarily longer period of time.
- ❖ An accused must be considered innocent until proven guilty.
- ❖ A representation from counsel/lawyer shall be given.
- ❖ They have rights to reasonable bail.
- ❖ Forceful confession of any criminal act is highly prohibited
- ❖ There must not be any threat of torture to the accused under the custody of police.
- ❖ The accused must be given a chance to present witnesses and evidence in its right to be proved innocent.
- ❖ He shall be given the right to cross-examine his opponents or accusers.
- ❖ Provision of the interpreter is necessary if the language of the court is unfamiliar.
- ❖ The right to appeal against a decision is also vary from country to country.

## 1.2. The Rights of Accused in Pakistan

The laws in Pakistan are mainly influenced by Islamic law. As Islam provides the true and basic guidelines for any type of law and proceedings in the society. Therefore, most of the constitution is driven by teachings of Islam and sharia founded more than 1400 years ago yet the Islamic justice system is as advanced as any other modern civil system. Thus, the upper house of the parliament is also known as Majlis-e-Shoora. The sufficient facilities have been provided to the minorities to confess and exercise their religious and social activities.

The constitutional law of Pakistan provides all the basic rights to the accused who are under police custody. The United Nations introduced the said right in UDHR 1948. Article 10-A has been incorporated in Pakistan's Constitution to protect the fair trial and due process of law. The article 10 (Fundamental Rights) mainly resonate around rights of the imprisoned persons. It has following sub-sections:

- ❖ No person shall be arrested without providing the appropriate information.
- ❖ The person shall be provided the right to consult the lawyer of his choice.
- ❖ The arrested person shall be presented in front of the jury within the 24 hours.
- ❖ The civil rights and obligations or against any criminal charge a person shall be entitled to a fair trial and a timely process.

Further, following compulsory rights shall be provided during the process of trial

- ❖ He has a right to obtain any evidence and witnesses in his favors as well as to be confronted by the witnesses against him.
- ❖ The accused person is guaranteed the right not to be deprived deliberately of life.
- ❖ He must not be exposed to torture or any inhuman/humiliating treatment.
- ❖ He shall not be held in slavery or to be required to perform forced labor.
- ❖ The infliction of torture by any public officer and cruel punishments are forbidden.
- ❖ It is also laid down that the torture of the accused, physically or morally, is forbidden.
- ❖ If a person cannot afford to hire a lawyer, the Pakistan Bar Council is bound to provide free legal assistance.
- ❖ Every person accused of a crime shall have a defender to defend him.
- ❖ It is not allowed to keep women in custody overnight until she is charged for murder and that too in the presence of female police officer.
- ❖ The right to appeal and compensate the illegal criminal system and any failure to provide proper justice.

Further, apex courts of Pakistan clearly recognized and held that an accused has to be apprised of the accusations against him as an elementary and essential principle of fairness, so that he may have a fair opportunity to rebut and refute any statement against him and to defend his own case.

### **1.3. Problem Statement and Existing Gap**

A statement of the problem is used in research work as a claim that outlines the problem addressed by a study. In this research, researcher is interested to know about comparative study of the fundamental rights of the accused in Police Custody. This study is about to know rights of the accused safeguard under different codes and sections under criminal justice system enforced in Pakistan among these fundamental rights. The paper also intended to know perception about violations of accused rights as trial and procedure. The thesis will also cover the analysis of the theory and practice of the human rights laws. This is a descriptive study to highlight different variables.

### **1.4. Research Aim**

The key purpose of the study is to assess how far the efforts for the enforcement of right to fair trial in Pakistan are sufficient? It actually allows governments to exercise their powers in a proper way. It is an essential fragment of the fair justice system which cannot thrive without ensuring fair trial in the society. Hope the study provides an advanced comparison on rights of arrested and accused person in police custody.

### **1.5. Research Objectives**

The following were the research objectives of this study:

- ❖ To know about the basic fundamental rights of human.
- ❖ To highlight the main reasons behind the violation of these rights by police.
- ❖ To understand the basic rights of accused person at the national and international level regarding law.
- ❖ Importance of Fair trial and due process of law in criminal justice system
- ❖ To compare these laws internationally to investigate more ways to avoid these violations under police custody.

## **2. Literature Reviews**

Literature review plays an important [and crucial] role in lightness the vital information relevant to analysis. Under Article 19 of the 1973 Constitution of Pakistan, freedom of speech is guaranteed to all citizens [beit with certain restrictions that include “glory of Islam”, “law and

order” and “national security”. These restrictions have often been exploited against different groups, most importantly against violations of basic human rights. Human Rights can be defined as those basic principles which are necessary to lead a distinction and Human rights are those definite moral assurances that people of all nation and civilization society apparently entitled just for the reason of their humanity. The human rights are grouped into three ages of rights. The Western square affirmed the "original" rights which incorporate ordinary and political rights for example directly to live, liberty, safety of individual, insurance against torment, directly of reasonable preliminary, directly of get together and affiliation, directly of discourse and development and such different rights.

The Communist Square worried for the "second era rights" which are financial, social and social in nature, for example, the directly to human services, training, sustenance, work, asylum and government managed savings and so on "third era" rights as of late rose, are group or gathering rights which incorporate directly to harmony, directly to self-assurance and directly of indigenous individuals. In Rationality, the improvement of the thought of the natural rights of man was contributed by stoic philosophers. They initially created common law hypothesis for the clarification of the idea of human rights.

In generally, these are the rights which available to every human being for their existence. The possibility of regular privileges of individual was resuscitated in the 17<sup>th</sup> century. In 1679 an act is being implements named ‘Habeas Corpus Act’ for the security of the resident from illegal detainment. In 19<sup>th</sup> Century almost all civilized nation adopted the fundamental right as basic part of their constitution and efforts are being made for their implementation by each State. Today by far most of legitimate researchers and savants especially in the liberal West concur that each individual has, from a certain point of view, some fundamental rights. Without a doubt, aside from some basically segregated late 19<sup>th</sup> century and mid twentieth century shows of worldwide compassionate concern to stamp the introduction of the global just as the general acknowledgment of human right.

### **3. Methodology**

#### **3.1. Research Philosophies**

The researcher’s belief about the understudied social reality is critical in shaping the methodology they adopt. The ontological and epistemological positions sharpen the focus of the investigation and the chosen methodology. Blaikie (2007) explained this phenomenon as: “The methodological perspectives are defined in terms of their ontology and epistemology, and include reference to the logic of theory construction, what counts as data, explanations and theory, criteria of validity, and views on the particular nature of social reality and the relationship between the natural and social sciences!” (Blaikie, 2007, p.6).

### **3.2. Research Design**

Research methodology would be qualitative. There are two types of data primary and secondary. The primary data will be law rules, regulations, precedents, articles and treaties will be consulted. Whereas secondary data will be newspaper, reports, articles and websites. The main source for collection of data will be libraries, particularly the library of BZU Central blearily, library of Gillani Law college and public library.

### **3.3. Developments of Fundamental Rights**

A precise classification of moral absolute that whole mankind can make, comes under the speculative and philosophical framework of human rights. The availability of the fair legal procedures by the constitution can also be make possible if these laws begin to be used unbiased. Whereas this word has two meanings firstly associated to "human rights," the second is linked as "human rights legislation" in this perspective. Majoritarianism make the laws authorized and the gradually the control of bureaucrat's executives increase in such nations.

Originally known as fundamental rights or human rights, they should include the rights to life, freedom, and the common good, which were recognized in the United States Declaration of Independence. Human rights are defined by the United States Department of State as liberty from entirely artificial imprisonment and torture, violence, unfair trials, cruel and ubiquitous punishment, and intrusion, as well as rights to food, livelihood, medical services, and schooling, as well as individual liberty, way of speaking, arrangement, religious beliefs, journalists, movement, and depiction in government.

Respect for individuality and dignity, regardless of ethnicity, gender, class, religion, or other characteristics, is the underlying principle defining the concept of equality. As the consequence, Pakistan adopted the international humanitarian agreements and make sure to protect and form individual rights. It facilitates the Pakistani administration to incorporate worldwide accords into local legislation. All three sections of government including administration, legislation, and judiciary require identifying and shielding the rights.

## **4. Methods of Individual Rights adopted by Pakistan**

Pakistan has implemented an amount of global and domestic judicial systems to enhance and defend all inhabitants' fundamental rights and freedoms.

### **4.1. International Instruments**

- ❖ Pakistan ratified the International Covenant on Civil and Political Rights on June 23, 2010. (ICCPR).

- ❖ Pakistan joined the International Covenant on Economic, Social, and Cultural Rights on April 17, 2008. (ICESCR).
- ❖ Pakistan signed the Convention against Torture and Other Cruel, Dehumanizing, or Demeaning Punishment of The crime on June 3, 2010. (CAT).
- ❖ Pakistan ratified the Convention on the Rights of the Child on Nov 12, 1990. (CRC).
- ❖ Pakistan adopted the Convention on the Elimination of All Forms of Discrimination against Women on March 12, 1996. (CEDAW).

#### **4.2. National Instruments**

Pakistan's constitution, national laws, and country legislation and standards guarantee national legal rights. It might be stated as follows:

- ❖ Pakistan's Constitution guarantees all people' basic rights sans discrimination.
- ❖ Pakistan's economic law ensures that every citizen's civil rights are protected.
- ❖ The laws and regulations of country that give detailed descriptions of some rights of the nation. Legislation and requirements on government representatives and other acts are two of so many examples.
- ❖ The sociocultural codes of ethics are linked to the specific human rights.

#### **5. Forecasts of Individual Rights in Pakistan**

The rights of human are considered important of the constitutional draft of Pakistan. It can be expressed through with the subsequent changing aspects:

##### **5.1. The Rule of Law**

The "Rule of Law" is the utmost important aspect of human rights principles. It denotes a lack of arbitrariness in the government's leadership. The rule of law is considered ultimate, and no one is privileged or immune from it. Article 09 of Pakistan's Constitution provides essential rights, as well as the approval of civil liberties and liberties. But in actual the state of rule of law in Pakistan is unquestionably awful. Countless of examples of the rule of law's deteriorating reputation can be seen in Pakistan right now.

##### **5.2. Enforcement of Laws, Acts and Policies Incontestably**

To promote and defend people's rights, Pakistan has passed a sequence of regulations, ordinances, and rules.

- ❖ On December 24, 1981, Pakistan passed the "Crippled Persons (rehabilitation and employment) Ordinance," which provides for the workforce, rehabilitative services, and careof disabled people.



- ❖ Crimes Laws Amendment (Anti-Rape Laws) Bill, 2013.
- ❖ The Hindu Marriage Bill, which was passed in 2015.
- ❖ Women's Freedom from Harassment at Workplace (Amendment) Bill, 2014.

Even after the implementation of these laws and regulations, the crime and murder rate are rapidly increasing in the Pakistan with every passing day. The lack of enforcement of the law is the real cause of this problem along with the police, lawyers and other related authorities.

### **5.3. Independence of Judiciary**

The term "judicial independence" refers to a country's court system being fair and impartial. It can make choices without intervention from the executive authority branches of government. Articles 09, 25, 175 and 203 of Pakistan's Constitution affirm and assert the court's autonomy. In actual, the court's autonomy exists only on paper, and magistrates are serving their loyalty to the dominant political party. Nevertheless, a fair and unbiased judicial system cannot be established in Pakistan.

### **5.4. Raise of Democracy**

The political system ensures that people have a say in who leads them and who governs them. Since Pakistan had a feeble and disorganized constitutional event which is unable to address crucial governance problems, democratization failed extremely rapidly after liberation. In 1958, the civilian administration and soldiers took control of the country because of growing political unrest.

### **5.5. The Commissions**

Pakistan needed an oversight committee to prevent deep-seated graft and severe violations of human rights to strengthen the country's anti-corruption and anti-human-rights efforts. Pakistan has established "National Accountability Bureau" and "Human Rights Commission of Pakistan (HRCP)" to meet provide justice and serve equality to the people but both commissions are controlled by the government in one way or another even they claim to be fair.

## **6. Challenges to Pakistan**

Pakistan is facing numerous challenges; they are destroying the state image and demolish the civil liberties of a person as a person being. Several challenges are listed below:

### **6.1. Extra Judicial Killing**

"Extrajudicial killing" is a serious individual rights exploitation that frequently results in the criminal prosecution. It has become an important aspect of Pakistan's crime control apparatus. Even though the Pakistani Constitution and the United Nations' Comprehensive Statement of

Individual Rights clearly designate this act as a breach of civil rights, it remains in Pakistan. Despite Superior Rulings, extrajudicial executions persist, which is a violation of the nation's military rule of law.

## **6.2. Torture in Custody and Deaths**

Protective torment and demise are effectively forbidden according to the domestic and worldwide laws. But it is practiced almost daily in Pakistan to pull out news from the suspects individuals in custody. The police sometimes make the reports disappear or sometimes they make the false postmortem reports. A lot of times, family were frightened with reprisal if they tried to accuse the cops involved.

## **6.3. Political Violence**

Deadly instability, like other foreign states, is a kind of breach of human rights in Pakistan. Political dominance, a lack of economic practice among major parties, hostility, and the unlawful authority have all been identified as major contributors to Pakistan's deadly conflict.

## **6.4. Corruption**

In Pakistan, corruption seems to be another impediment to the advancement of the protection of fundamental rights. It frequently refuses to apply the rules against strong culprits, diminishing the public's expectation for justice. Pakistan's police force is among the most fraudulent in the world, and it is a catalyst for social discontent and disowning of essential human rights. The unethical administrative employees, as noted by multiple high or Supreme Court justices, are the rationale why common citizens do not receive judgment in a timely manner and are deprived of human rights and fundamental freedoms.

## **6.5. Independence of Media**

The constitution guarantees freedom of expression and the press, but in fact, the government routinely violates these liberties. Attacks on journalists have recently become a source of worry. Journalists have been harassed, arrested, and assaulted by those linked with the government or ruling party. According to the 2018 Democracy Index and Journalists Beyond Border, Pakistan stands 139th out of 180 nations in terms of press freedom.

## **6.6. Border Killing**

Border killings by boundary forces are another dreadful issue affecting Pakistan's border dwellers. Poor and underprivileged persons from bordering communities frequently cross the border to serve and begin labor. Though some of those slain were smugglers of commodities and

commodities, border guards often use reasonable force without cause. Despite the Pakistani government's continuous protests, border killings persist.

### **6.7. Violence against Women**

In the framework of Pakistan's conventional socio-legal structures, violence against women is frightening. It has been noted that women and girls are disproportionately victims of violence. Women are endangered by violence in communal and private spaces; it is of several kinds, e.g.: domestic or spouse violence to sexual harassment, trafficking and sexual violence and gender-based murder. Its impacts can be physical, behavioral, and psychological damage to women and girls and sometimes leads to death.

### **6.8. Independency of Peaceable Assembly and Association**

Despite the legal assurances of right to freedom of association, law enforcement agencies have imposed restrictions in particular places in the excuse of safety and security reasons. The government is subsequently held responsible for the restriction, which is seen as a breach of freedom of thought.

### **6.9. Abuse of Rights of Government Workers**

It is generally reported that garment workers' obligations to a basic salary and a safe workplace are being infringed. The leaders of the government workers' unions frequently assert their rights and call for demonstrations to accomplish them. The method frequently breeds suspicion between the proprietors of the clothing and the employees, resulting in a confrontation. Human rights violations are caused by several social, financial, intellectual, and political causes.

## **7. Comparison between Pakistani & US Law System**

In times gone by, it has been understood that the criminal justice has to be served within the absolute perspective of the State, to serve the justice the implementation of the international standards of laws at domestic level should be made compulsory under the supervision of sovereignty. This helped in the development of contradictory and occasionally considerably discrete criminal justice systems around the world. Nevertheless, 'the erosion of the sovereignty barrier' driven by 'the growing need for a common approach to crime, the realization of the value of sharing experiences, and the growing respect for human rights' enabled an increased penetration of international legal norms into the domestic legal system.

### **7.1. International Human Rights Standards and Legal Status**

With the insertion of International standards of human rights and imposing them in our society the human protection dignity and the relationship between government and individuals has been

transformed immensely and make public authorities more accountable. The International Bill of Rights which included the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) is one the utmost renowned international human rights standard.

While the UDHR is the prime UN document which systemize the human rights, it is not a legally obligatory document and consequently falls within the realm of soft law. Pakistan has also ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Rights of Persons with Disabilities (CRPD), the Convention on the Rights of the Child (CRC), and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) which form an integral part of international human rights standards.

## **7.2. International Human Rights Standards and Pakistan**

In the present days, despite the fact Pakistan has established an independent criminal justice system, it has certainly been influenced by international standards and norms. This influence is particularly apparent in recent judgments discussed below which refer to international human rights standards and their significance in domestic criminal cases.

### **7.3. The Right to Life, Liberty, and Security of the Person**

Recently, in an application for recovery of a prisoner from alleged illegal custody, the Lahore High Court affirmed the importance of international human rights standards and demanded the commission of an inquiry into the potential abuse of power by the police. The Court acknowledged that the 'right to liberty and security is sacrosanct' and States are obligated under international human rights law to protect it as without guarantee of liberty and security, all other individual rights become illusory.

The Court cited the UDHR, the ICCPR, the ICESCR, and five more core human rights Conventions which Pakistan has ratified. The Court also acknowledged how the right to life, security and liberty are safeguarded under Article 4, 9 and 10 of the Constitution of Pakistan, 1973 and the Code of Criminal Procedure 1898 (CPC.), the Police Order 2002, and the Police Rules 1934 comprise details on how to guarantee their protection.

### **7.4. The Right to be protected from Double Jeopardy**

In a recent appeal against a 2017 *qatl-i-amd* conviction and life imprisonment sentence, the Appellant claimed that his trial was void ab initio because it was held in violation of the

protection against double punishment contained in Article 13 of the Constitution.<sup>13</sup> Afore deliberating the rule against double jeopardy in Pakistan, the Court stated the development of the principle on an international level which has surely influenced its development in Pakistan.

The Court cited Article 14(7) of the ICCPR and Article 4 of Protocol 7 to the European Convention on Human Rights (ECHR) which recognize the principle of protection from double jeopardy. The court further stated that the principle that a person shall not be tried twice for the same offence is reflected in Article 13(a) of the Constitution of 1973.

### **7.5. The Right to Freedom from Torture and Cruel, Inhuman**

Earlier this year, in a habeas corpus petition intended at gaining the recovery of three allegedly unlawfully confined detenus, the Court came to the conclusion that the detenus were unlawfully kept back from proceeding and therefore were to be awarded compensation by the offensive police officers. The Court made a point to give attention to the dilapidated conditions of the detenus when produced before the Judge to highlight how the detenus' fundamental rights were violated.

The Court noted that by signing and ratifying the UNCAT in 2008 and 2010 respectively, Pakistan assumed responsibility to take effective legislative, administrative, and judicial measures to prevent acts of torture in the territory and to educate law enforcement personnel regarding the prohibition against torture during custody, interrogation, detention, or imprisonment.

### **7.6. The Right to Equal Treatment before the Law**

At the turn of the year when in the crucial judgment the Lahore High Court professed the two-finger test illegal and against the Constitution, the Court ascertained Pakistan's international obligations and the fundamental rights deliberations which prejudiced the decision. The Court pointed to the declarations made by the UN Committee on the Elimination of All forms of Discrimination against Women and the UN Special Rapporteur on Violence Against Women that virginity testing is an injurious practice.

The Court stated that the CEDAW, which Pakistan has ratified, prohibits all forms of discrimination against women and as per the ICESCR, which Pakistan has also ratified, the two-finger test has been denounced for having adverse physical, psychological, and socioeconomic consequences. In addition, the 1995 Beijing Declaration and Platform for Action of the Fourth World Conference on Women called upon States to take all appropriate measures to eliminate harmful, medically unnecessary, or coercive medical interventions.

### **7.7. Protection of Juvenile Offenders**

During a criminal appeal under Section 48 of the Control of Narcotic Substances Act 1997, where the appellant was a first-time offender and claimed to be under the age of 18 at the time of the commission of the offence, the Court referred to a 2019 case which relied on international human rights standards. In consonance with the prior authority, in this case the Court held that the appellant was entitled to compassion and his verdict was altered from 10 months and a fine of Rs. 10,000/- to the prevailing sentence.

### **7.8. Effect of Implementing International Human Rights Standards**

It was analyzed that the actual impact of international human rights standards on a domestic level is difficult, it is contended that the recognition of international standards may be used to certify the provision of due process and protection of the rights cherished in the constitution at local courts. Though Pakistan has a system of laws for the provision of due process in criminal trials, international standards provide a benchmark for criminal procedure. Recognition of such a benchmark enables Courts to ensure that Pakistani laws are applied in a way where domestic protection meets international standards.

The Court also directed the Inspector General (IG) of Police to take all necessary steps to ensure that officers act in accordance with international standards and delinquents are disciplined, providing the IG a clear goal in terms of training. Therefore, international human rights standards are being used as a tool to strengthen Pakistan's criminal justice system, its protection of fundamental rights and provision of due process. Furthermore, recognition of international human rights standards within Pakistani criminal courts enhance Pakistan's image in the international community by signifying that the State is devoted to protecting human rights in line with their international obligations.

## **8. Development of Fair Trial in USA**

### **8.1. Right to Fair Trial under the 6<sup>th</sup> Amendment**

The right to fair trial under 16th Amendment may be discussed in the undermentioned ways.

### **8.2 Speedy Trial**

During the rule of Henry-II, (1154–1189), the English Crown introduced the Assize of Clarendon, a legal document, which comprise of 22 articles, one article deals with speedy justice to all accused persons. The concept of speedy trial was also introduced in Magna Carta, (1215) under clause 40 which emphasizes on expeditious resolution of the matter without any prejudice (The British Library, 2014).

The right to speedy trial was introduced in the Constitution of U.S as 6th Amendment. Speedy trial includes the following four tests. It can be concluded from these tests whether speedy trial has

been offered or not. These tests comprise time period of delay, explanations for such delay, assertion raised up by the defendant on the lookout for speedy trial and fortitude of fact whether such trial was partial or not.

### **8.3. Public Trial**

Americans have inherited public trial factor from Anglo-Saxon jurisprudence. Anglo-Saxon law, the body of legal moralities, triumphed in England from the Sixth to Eleventh century. The 6th Amendment of US Constitution provides the public trial to the accused person in all criminal trial. However, the public trial is not absolute. Under special circumstances, court may be closed for the public. The public trial is conditional and applied in exceptional cases.

### **8.4. Trial by Impartial Jury**

A jury that is unbiased lacks prejudice and will give a fair decision or verdict. Sixth Amendment has secured the prerequisite of impartial jury and fourteenth Amendment, on the other hand, ensures the clauses of due process and equal protection. If jury use arbitrary power, then any defendant has right to challenge it and the Court can exercise its supervisory power over federal courts.

### **8.5. Notice of Accusation and to Confront Witnesses**

A defendant facing criminal charge has the right to get information about the nature as well as the cause of the allegation leveled against him. The Confrontation Clause has been evolved from both Roman law and English Common law. The right to cross examine protected the right to accused by English Common law. In Roman law, the accused person has right to get the information about his crime. The main idea to give this right is to protect the accused person with the idea of being innocent until charge is officially approved. This right is applicable only in criminal trials, not civil trials or other legal proceeding.

### **8.6. Assistance of Counsel**

The defendant should get assistance of counsel in all criminal trials according to the 6th amendment. The choice of the defendant should be considered. He should not be forced to engage such counsel who has conflict with his interest. Effective assistance should be provided so that the case of the defendant can be presented effectively and thoroughly to eliminate any chance of convicting an innocent person for a crime which he never committed.

### **8.7. Right to Fair Trial under 14<sup>th</sup> Amendment**

The 14<sup>th</sup> Amendment becomes part of the US Constitution on 9th July 1868. It gives rights of citizenship and safeguards equal protection of law. It was meant to address problems regarding

former slaves supporting American Civil War. The first section of Fourteenth Amendment contains numerous clauses: the Citizenship Clause, Equal Protection Clause and Due Process Clause. The Equal Protection Clause executed obligation on every state to provide equal protection to all people under the law along with all non-citizens, who are under its control.

## **9. The Idea of Fair Trial in Pakistan**

Approach to justice comprises fair and hasty trial. Article 10-A of the Constitution has secured the rights of accused persons in all criminal trials, to get fair and speedy trial, free and fair opportunity of hearing, to challenge veracity of a witness, to engage a counsel and due process which means to provide safeguard to every person from arbitrary use of executive power.<sup>19</sup> Pakistan adopted the Investigation for Fair Trial Act, 2013, to align the investigation techniques along with the rapid development of modern world.

Military courts, working under the Army Act, 1952, deals only with the matter involving the army but after the unpleasant incident of Army Public School Peshawar, all political parties settled to amend the Constitution of Pakistan 1973 by way of 21st Amendment and adopted Pakistan Army Act, 2015. However, the amendment is differing to the Article 175(3) and 10-A, (fundamental rights) of the Constitution of Pakistan 1973.

### **9.1. Development of Fair Trial in Pakistan**

The 48 members of united nation permitted Universal Declaration of Human Rights (1948). In 2020, the right to fair trial has been introduced as one of the fundamental right by eighteenth Amendment in Pakistan's Constitution as Art 10-A. However, the right had already been recognized by courts through a long list of judgments. The Investigation of Fair Trial Act, 2013 adopted to make up the deficiency found in the process of fair trial. This Act aids in collection of data pertaining to investigation with the utilization of modern techniques.

### **9.2. Right to Fair Trial**

Golden principles of administration of justice comprises the idea of fair trial as well as due Process but its assimilation in the Constitution in the form of article 10-A made it more operative and noticeable. Conducting the fair trial is obligatory, violation of due process is illegal, and order passed as such is to be revoked. The accused person has following rights under Article 10-A.

### **9.3. Opportunity of Hearing**

Right to unbiased hearing finds its origin from the maxim 'audi alteram partem' meaning that conviction should be made after hearing. The manifestation merely infers that a person must be awarded an opportunity of fair hearing to stand up for him. In admonition, this code has secured



the right of fair play and justice to accused persons. Its application was based upon the principle to boost administrative efficiency and to encounter justice.

In case, the petitioner stated that Chairman Punjab Board of Technical Education passed the orders regarding cancellation of diploma of Associate Engineer. He was also not provided opportunity of hearing. The Court issued direction to Anti-Corruption Department to drop the previous inquiry against the petitioner.

#### **9.4. Right to Confront Witnesses**

Under Article 10-A of the Constitution, the suspect individual is entitled to cross examine the witnesses. He should be provided enough opportunity to ask questions from the witness in order to challenge the veracity of a witness. In case titled, a landlord filed a petition under Article 10-A in which he stated that the tenant failed to produce the witness so there was no chance of cross examination.

According to the Art, 10-A of the Constitution the right of defendant to challenge veracity of the witness is secured and if Court had not provided the chance of cross examination to the defendant, then such proof was not acceptable legally. Article 10-A of the Constitution has protected the said right. If application is moved by the accused and the Court has not granted the relief for any reason, then reason must be stated in the judgment.

#### **9.5. Types of Legal Systems**

Legal systems vary for all the countries around the globe, and sometimes even within a single country. Even though they develop in different ways, legal systems also have some resemblances based on historically accepted justice epitomes. Legal systems fall into groups or patterns with some similar features within each group. Among the main groups that you might encounter are:

- ❖ Common Law
- ❖ Civil Law Religious
- ❖ Law Customary Law

Many countries employ more than one of these systems at the same time to create a hybrid system.

#### **10. Pakistan and US Law**

The right of participation in political and social issues, right of self-defense, petition, have legal help, right to vote and fair trial are some of the laws included in the rights of accused one. Now, in democratic countries the prosecutor has the duty to properly investigate and defend the accused or bring him to the sentence according to the facts. First-generation human rights also

known as blue rights are the right of a civilian to participate in the political issues. They include religious freedom, freedom of having opinion, freedom to choose whom to vote and to have the political views.

Civil and political rights have great importance in international human rights. The initial section of Universal Declaration of Human Rights 1948 is centered on them and other half is consist upon economy which leads towards the progress of the society. The three generations of human rights theory suggest this group of rights is well thought-out to be the “first- generation rights”, fall in the category of negative rights.

### **10.1. United States Criminal Code of Conduct**

US criminal system consist of a lot of things but the baseline is about the criminal procedure laws, constitutional process, federal and states law implementation and any state where these are laws are not being followed judicial authorities can interrupt the process. The bill of rights and the changes made in the law of United States have amendments related to the criminal procedure. With the integration of Rights bill, all of this type of procedure would be helpful for the criminal proceedings which can be omitted through the Grand Jury Clause of the Fifth Amendment, the Vicinity Section of the 6<sup>th</sup> Amendment, and the Acute Bail Section of the 8<sup>th</sup> Amendment.

### **10.2. United States Sixth Amendment**

Rights of accused people that includes early trial without unnecessary delay, to know the type of charges on them, to know the accuser and to hire the lawyer for them, to get unbiased jury were introduced by the 6<sup>th</sup> amendment. The implementation of these rights in the court was looked deeply by looking over the criminal cases and the cases of sensitive genre that includes the protection form the revenge cases and sexual harassment cases.

### **10.3. Amendment VI in Constitution**

The unbiased jury should conduct the trial on priority of the accused one. The jury should be of the same district where crime was done. The guilty person should be given all his rights of knowing the type of case, to select the representation, to know the statement of the hearing and that is important clause in the amendment.

## **11. Historical Background of Speedy Trial Right**

The guilty should have the right of as early as possible public trial in every kind of criminal hearings under an unbiased panel of the region where the crime was directed. The guilty should be well-versed about the type and base of the allegation, before antagonized with the witnesses, should have right of finding favor and try proceed with mutual understanding. By getting inspired by the statement of the Magna Carta that goes as “they say that the process of justice must go on,

without getting into any kind of meaning which prove it negative, however one must know about the basics of the law.

Virginia Declaration of Civil rights of 177 and from there into the 6<sup>th</sup> Amendment merged the analogous thing. The prompt trial is a right of a respondent that helps the society along with the guilty. The approach for this process is an important thing to stop unjustified and oppressive imprisonment post-trial, to overcome issues and make himself so strong and capable to defend himself.

Whereas also, “it has a societal benefit to give a possible measure to work over process of trails which sometimes cause to be helpful for the accused interests” Persons in jail must be allowed to move freely mentally or physically just to establish their relationship with families. And delay can retard the restrictive along with process towards the criminal law, as mentioned in the law by keeping in mind the right way for free and right trial according to 6<sup>th</sup> amendment.

### **11.1. When the Right to a quick Trial is Applicable**

The person who has committed a crime and caught by the police when presented in front of the judiciary, he has right that his trial should be done speedily. The guilty person has the right to choose his representation, to have the witness and to be known by the type of charge on him. “The history of the right about the procedure for quick justice is regarded as most comprehensive part of the most elementary rights well-preserved by our Constitution. The evidence gathering and prosecution commencement can take the time between the trial. Partiality may occur from the delays between determining a crime and then investigation. or the time taken in finding the evidence and work against suspect and taking initiative of the proceedings is always tried to overcome within the limitations. This leads to the fair judgment. The process of justices has some sorts of restrictions.

Precisely, According to the Betterman Court the charges were to put after conviction that person who committed any crime would enjoy if the typical solution for speedy trial disrupts counting on the federal governments’ observance in managing the process of speedy trial which would be helpful for the working of court guarantee the court through Speedy Trial Act. It highlights that it would be helpful for the process of the speedy trials.

### **11.2. Public Trial Right**

The quick and public trial is the basic right of the criminal hearings. The jury conducting should be of the same region where crime was executed and should be neutral. The accused person should know the charges on him and should be given the right to defend himself. Moreover, he should be able to see through all the witnesses against him and is allowed to get legal help from representation of his own choice.

### **11.3. Right of Public Trial (Doctrine and Practice)**

In this practice, the defendant must have an authority to process through speedy trial in any criminal process or exercise. It should have the right to work effectively in any criminal activity. The jurisdiction of any State or government must not be in favor of anyone. The observer must know about the details about the accusation. He must be able to talk to the opposition in a meaningful way and he must have right for obtaining witnesses in his favor just for sake of assistance.

The High Court has quoted several civic and process-related objectives by highlighting different trials. Through this one can get help accordingly. They discourage favoritism and make it sure that case should proceed in a meaningful way. Open trials give complete understanding about the process of judiciary in order to make it more helpful for the public use and interest.

### **11.4. Accused in the Pakistani Legal System**

It is very obvious that individual on whom charge is placed and legal process starts and is under the trials is accused person. Whereas offender is a person on whom the commission of the offence has been verified under the execution of law. On the basis of this explanation, accused and offender are not the same because the one mentioned prior is the one who is found guilty about any crime. There are a lot of rights for accused person in the laws that are categorized as pretrial rights. These are explained underneath.

### **11.5. Right to be defended against Random Charges**

The Criminal Procedure Code of Article 10 of the Constitution of Pakistan and Section 60 and 61 say that the accused must get assurance and protection against illegal law duties. No one can be get arrested by the Police without legal notice. As per the Article 10(1) of the Constitution of Pakistan accused tried to cover themselves through any law procedure. In this regard, plea can be filed in High Court to cover oneself.

Accused can get permission from court to move outside from jail by providing suitable evidences for the rule of writ of Habeas Corpus. Habeas Corpus is a judicial rule highlights the duties of jail officials. The High Court of the country has the authority to use its power under Section 491 of the Code of Criminal Procedure. The prisoner can also use the procedure of the court for hearing of its case. In this regard, the accused cannot be hold by the police without a warrant by Section 51 of the Criminal Procedure Code as per law.

### **11.6. Accused Protection by Magistrate**

The arrest of accused in the police station is limited to 24 hours only and the time beyond this is illegal according to the constitution and criminal court code of conduct under the Article 10(2) of

the Constitution, Section 61 of the Criminal Procedure Code. The duration of 24 hours has been specified in law to investigate the imprisoned by police in the meantime. As per Section 344 and 167(1) of Code of Criminal Procedure, Law officer can use its power for the defendant on remand for the duration of 15 days.

### **11.7. Protection Opposed to Ex-Post Facto Law**

This refers to the criminal law that actually highlight the process by using law as the powerful tool when originally conducted. US law also not allows permission towards ex-post facto law. The punishment for an existing crime also increases according to it, in this the person who committed crime will have to face the punishment according to the law. It is founded on the legal maxim that means punishment cannot be given without law. According to this article the person accused of any crime which was not punishable at the time when it was conducted will not get punished. Moreover the article explains that the accused cannot be over punished for any crime.

### **11.8. Right to be informed about Reasons**

In Section 50, 55 and 75 of the Criminal Procedure Code of Article 10(1) of the Constitution, it is essential to notify about the reasons of his arrest before detention. This provision of law has allowed the accused to not be arrested indiscriminately with no cause. He has right to have the explanations for his arrest and can help him through law process in the court.

### **11.9. Right for Fair Trail**

Article 10 A of the Constitution ensures that the fair trial is the right of the defendant and have to be tried by sovereign judiciary as per the progression of law. He has right of go for open trial in any court of the country.

### **11.10. Right to Confine Police**

Article 14(1) of the Constitution of Pakistan considers that honor of any citizen must remain intact and its home territory must keep intact. It is against law to violate the privacy; if it's so important then there must proper solution for it through law.

## **12. Rights at the time of Trail**

### **12.1. Freedom from Torture**

Torture is never entertained at any cost any time and is banned. The cruel punishment, inhuman behavior or humiliating treatment is included in the torture. Torture is against human rights and therefore, United Nations Agreement is against it. It is prohibited to reveal an individual to intolerable surroundings that maybe harmful for them mentally and physically. Article 14 (2) of

the Constitution forbids to torture for extraction of evidence. The accused cannot be beaten to his soul out to get the information from him in any case.

### **12.2. Protection from Double Inquiry**

According to this right no person should be bothered twice for the same reason. That implies that one person cannot be summoned at court for the same matter and cannot get same punishment twice. The protection against double jeopardy is given to the individual under the Article 13(a) of the Constitution and 403 section of Criminal Procedure Code. The rule in this section of the Criminal Procedure Code is same as principle of jurisdiction written in in Sec.11 of Civil Procedure Code.

### **12.3. Right of the Under Arrested**

The basic purpose of the unnecessary restraint is to restrict the accused from escape. According to Sec 50 of the Criminal Procedure accused one have the right for this too. According to the law the restrained is only allowed to the point where the escape of the prisoner can be restricted by police. If he has been holding in chains or kept in miserable state it would be against his right.

### **12.4. Right to be Followed Law**

The constitution guarantee the citizens that they will get the rights and will be treated unbiased. Due process comprises of functional due process and procedural due process. According to the Article 10-A. The person is to be apportioned under due process of law no matter what are the circumstances. He should be treated under the laws of constitution according the crime anybody has committed.

### **12.5. Right to have Access to Justice and Equality before Law**

As per Article 25 of the Constitution of Pakistan it has been said that no one is superior to the law and every Pakistani resident will avail equal rights. No one can be prioritized or can get favor on any basis. The rights of the common citizens and the accused person are no different from each other as they are also a member of the community of Pakistan and no one can grab that opportunity from them. Moreover, law is obliged to protect all also without discrimination.

### **12.6. Right to have Adviser of Choice**

The accused person can use an option to avail the facility of having an advisor at his wish to represent his stance in the court of law according to the Art. 22(1) of the Constitution and Sec.353 of the Criminal Procedure. It is its fundamental right to use law by following all procedure according to law. It's his right to enjoy free legal help if he is well established.

### **12.7. Right of the Witness**

It's the basic right of the accused person that no one can force him/her to provide evidences or proofs against them by themselves. Article 13(b) of the Constitution assures that the accused are not bound to regard as witness if he is having charges over him.

### **12.8. Right to have Access to the Documents**

Sec. 265-C of the Criminal Procedure Code tells that the accused have the facility to get the copy of the F.I.R report. If the guilty person cannot read the reports, then the judiciary is obliged to provide the translated copy in any language the individual asks for and the service is free of cost. Process of (FIR), by using Section 161 and 164 of the Criminal Procedure Code.

### **12.9. Right to Claim of Evidence**

The accused has the right that the witnesses should be provided towards attorney under Sec.353 of the Code of the Criminal Procedure. It regarded as the basic criminal justice law. If the accused desires to not attend the hearing himself the Court allows it, then later he has no right to complain that the exclusion was not good and the trial should be finished at once.

### **12.10. Right to be examined with the better Communication**

Accuse is to examined by magistrate by the criminal procedure code Section 364, 361, 360 and 357 or the language used in the court surely understood by the accuse. If the accuse do not understand the language in which the proceedings are held in the court, then he is able to interpret them to talk in the language that the conducted proceedings can be understandable for him for what he is accused of or what punishment he eligible of and eligible of with which Qanoon. Accuse can also read his statement which is given by him so that if he wants to add something in his statement, he can add and then after reading his statement again.

### **12.11. Right to know about Charges**

All the questions asked and answers given should be recorded in the court during the proceeding as per Sec.364 of the Code of Criminal procedure. Under Section 364(2) the suspect should give confirmation that the statement made is true and he attended the procedure and his/her signature should be conducted and court will then attest that what he said was true. In the light of Section 360 of the Criminal Procedure Code that such type of witness must know about all his procedure. Throughout the process if witness claims that there is something wrong in the statement, the judge is obliged to take notice of the objection and should made his remarks as per his desire.

### **12.12. Right to Cross-Examine the Evidence**

Sec.133 and 134 of Qanun e Shahadat gives the right to the guilty that he can demand to examine the witnesses again through his lawyer so that he can stand for himself against the allegations.

### **12.13. Right to have a chance for Explanation**

An accused cannot be punished without hearing of the case according to the rules of the judiciary system. The accused person has all the rights to stand against the allegations on him. Section 364 of Criminal Procedure Code says “when the accused must be investigated by Court. All the process must be saved and recorded. That must use for an evidence.

### **12.14. Right of having trial through impartial Judge**

Article 175 of the Constitution<sup>46</sup> gives independence to the judiciary to ensure the justice. A guilty person must use his sources prove its case as being the member of the sovereign country. It is his fundamental right that judiciary and an unprejudiced judge must look into his matter.

## **13. Post- trial Constitutional Rights**

### **13.1. Right to get Bail**

If a person assured the court her presence for hearing whenever needed and custody to the police then he can get released. But bail cannot be granted to the person if his accused crime is not bailable according to the laws of states and Section 496 of the Criminal Procedure Code endorses the same. If a non-bailable criminal is granted the bail it’s not a right in fact a favor given by court to the guilty.

### **13.2. Right to Appeal**

The accused person can file an appeal according to the Sec. 408, 410, 411-A of the Code of Criminal Procedure and Article 185, 203-F, 212 of the Constitution of Pakistan to the concerned forum if wants to challenge the decision of the judgment and is not satisfied with that.

### **13.3. Right to have a Copy**

The accused one can demand the copy of the judicial judgment according to the Sec 371 of the Criminal Process Code. The court also facilitates the respondent with the free of cost translated copy of reports in any language that the guilty person can understand. If the accused got punishment to death by a Session court, he will get the time to appeal in court if he wants to.

## **14. Exceptional Rights of Vulnerable**

The groups of people who require care more than usual people and protection are also covered under the shield of laws. They include following people.

### **14.1. Lunatics**



The person who is not stable mentally comes under this group and if someone is lunatic and cannot defend himself in the court then according to Section 464 of the Code of Criminal Process, court has the right to decide whether he deserve the special treatment or not, if someone he proved as unstable person court can release him on bail with the note that he shall get proper treatment and care.

#### **14.2. Women**

The special protection has been given to the woman under Sec 52 of the Criminal Process. If the suspected woman is meant to be searched it can only be done by the lady police and male police cannot arrest the female. Police cannot keep the woman in jail overnight until the crime has been confirmed.

#### **14.3. Youngsters**

It is mandatory that by using writ through section 497 of the Code of Criminal Procedure, the person under the age of sixteen can get bail on courts order no matter what is the intensity of the crime.

#### **15. Conclusion**

The conclusion is about to note that a violation of the rights available at the pre-trial stage of proceedings, or a failure to provide same might not axiomatically nullify the validity or fairness of the entire criminal process, provided that redress and/or the opportunity to rectify any imbalance that might occur as a result of the accused being denied his custodial rights is sought during trial.

Pakistan adopted UDHR in 1948 which specifies in its Article 10 that every person has allowed for getting fair and public hearing conducted by unbiased tribunal in all criminal cases. Right to fair trial recognized by Courts through judgments but it was properly introduced in the Constitution of Pakistan 1973 through 18th Amendment under Article 10-A. The main purpose of this act is to prevent the intelligence and law enforcing agencies from using their arbitrarily powers.

The two amendments i.e. 6th and 14th Amendment in the Constitution of US assures the right to fair trial to everyone living in Pakistan. The right is applicable in both civil as well as criminal proceedings. Right to public trial provided to every accused person in all criminal cases. However, the public trial is not complete, but the court has power that the public trial may be closed in exceptional cases. A jury must be unbiased, lacks prejudice and will give a fair decision. The prerequisite of impartial jury has been secured by 6th Amendment.

The right to cross examination has been evolved from both Roman law and English Common law and the accused person has right to get the information about his crime. The accused persons should be confronted with the witnesses. Every accused person has right to get fair opportunity of hearing and non-provision of said right violates Art.10-A of the Constitution. The order passed by the Authority without conducting regular inquiry is set aside by the Court. The respondent has right to challenge legitimacy of a witness.

The responsibility of the Court is to provide counsel to the accused on State expense if accused is not able to hire the same. Trial must be completed within reasonable time by providing opportunity of fair trial and giving the information about the charges to the accused which are principle of due process of law and right to fair trial. However, the said article needs attention of the judiciary to be implemented in true letter and spirit while seeking strategies from the US legal precedents.

Legislation governing provisional release on bail and surety is important as it gives effect to the notion of presumption of innocence embedded in international human rights law. Inadequate legislation or the lack thereof prevents accused persons from realizing this fundamental right and provides inadequate guidance to judicial officials who might use their unfettered discretion to make decisions incorrectly or with bias. The vagueness and uncertainty in legislation pertaining to the possibility of prosecutorial release in an accused person access to an expedited conditional release system.

The twentieth century has witnessed the breakthrough of human rights and international criminal law, including the setting up of international criminal tribunals. The two bodies of law are related in the sense that the latter holds individuals criminally responsible for serious violations of the former. In the context of international crimes, due to their serious nature sympathy evidently goes to the victims of these crimes. Individual victims, their communities and the international community aim to bring the perpetrators to justice and indeed should strive for seeing that the perpetrators are duly punished. However, providing for rights to a suspect or accused person is fundamental to a fair administration of justice and for a genuinesystem based on the rule of law.

## **16. Practical Implementation**

This contribution has exemplified some of the practical challenges identified on the edge of the tension between successful prosecutions of the most heinous crimes and providing a fair trial to the persons accused of these crimes. The issue of the rights of a suspect is a somewhat underexposed area of the law, which deserves more scrupulous attention in the course of international criminal proceedings. Adequately implementing the principle of equality of arms is an outstanding issue that has generated due discussion.

Finally, the catalyst for many challenges is the right to a remedy for violations of one's rights in the course of a criminal trial. In the context of international criminal tribunals this is another neglected area, colored by the 'special nature and circumstances' of these tribunals. The starting point of our discussion was the extent to which international criminal tribunals can safeguard the internationally recognized rights of suspects and accused persons in a criminal process taken as a yardstick for the partial achievement of the primary goal of these tribunals: to do justice.

Many problems concerning the implementation of the human rights of suspects and accused persons in international criminal proceedings depend on the special circumstances in which these institutions operate. The gravity of the crimes and the social pressure to achieve justice, the fragmentation of the process and the dependence of the tribunals on state cooperation are all impediments which the tribunals have to learn to deal with. Clearly, a general willingness to address and redress these problems can be identified at the level of the international criminal tribunals examined in this contribution.

However, any failure to do so cannot *principally* be justified by reference to practical and inevitable impediments even if these reside outside the tribunals' control. In that regard the discussion extends beyond the particular regime of international criminal tribunals. Most of the identified problems are intertwined with the nature of the contemporary international legal order. It is an inescapable conclusion that the rights of the individual should be at the forefront of any meaningful discussion in the area of international criminal justice.

Disregarding the different protects in the CRPC and in addition the in the constitution the energy of capture given to the police is being abused till this day. It is the obligation of the police to ensure the privileges of society. It must be remembered that this general public incorporates all individuals, including the captured. The denounced are the captured individual is made mindful of the rounds of his capture educated whether he is qualified for safeguard and obviously created before a judge.

**Compliance with Ethical Standards:** As corresponding author, I confirm that the manuscript has been read and approved for submission by all the named authors. There is no conflict of interest. Meanwhile, there is no experiment related to human or animals during research.

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