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## **Ascribing the Right of Fair Trial in the context of International Human Rights Law**

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### **Abstract**

The right to a fair trial has a long history and is identical with the trial process per se. It would be gibberish to highlight the acceptability of an unfair trial. After eras of execution in practice, the right to a fair trial, which was finally ordered in the international human rights instruments following World War II, is now commonly recognized. In this article the researchers will attempt to trace the compatibility right to a fair trial from UDHR, ICCPR and Constitution of Pakistan from its early roots up to the present day. Understanding its long history and realizing how little it has changed over the centuries clearly demonstrate its fundamental character and its status as a rule of customary international law.

**Keywords:** UDHR, ICCPR, Constitution of Pakistan, Jus Cogan's, IHRL

### **Introduction:**

The Right to fair trial means that when someone is accused of doing something wrong they have the right to be treated fairly by the legal system this includes having a lawyer to help them being able to show evidence that proves they are innocent and making sure that the judge and jury are impartial and not biased against them. The point is to make sure that everyone gets a fair chance to defend themselves and that the final decision is based on what is right and fair. The concept of a fair trial is very old. One of the earliest sources of the fair trial is the Magna Carta, which gave all free men the right to a fair trial by jury. Another source of the fair trial is the Roman law, which had a complex system of procedures and rules for criminal cases, such as the right to a defense, the right to appeal, and the principle of in dubio pro reo (when in doubt, for the accused). The right to Fair trial is concept which is also recognized by some philosophical and religious concept, for example Islam appreciate fair and just trial,

Christianity and Buddhism also provide guidance for such purpose. It's just like a norm and tradition and one of basic principle to ensure justice in such concepts and religions Development and codification; The concept of a fair trial was further developed and codified by various international and domestic human rights declaration, such as the Universal Declaration of Human Rights (1948), ICCPR (1966), the Convention for the protection of Human rights and fundamental freedoms (1950), Sane Jose pact (1969), and the Banjul Charter (1981). These instruments established the minimum standards and guarantees for a fair trial that apply to all countries that are parties to them.

#### **Research Methodology:**

This article embraces doctrinal methodology based on the Legal framework of the statutory laws pertaining to the fair trial with special reference to the UDHR, ICCPR and the constitution of Pakistan. It will compare the mutual similarities and comparison in terms of their scope and applicability for the purposes of the ensuring the fair trial rights for the persons on trial . So the qualitative research design will be invoked while conducting this research based on interpretative philosophy.

#### **Right of Fair trial under UDHR**

The provisions of the UDHR, adopted and passed by the United Nations General Assembly on December 10, 1948. UDHR is an international document which guarantees the rights of individuals, and also the right of fair trial and reads as follows: Article (10) of UDHR: "Everyone is entitled in fully equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him." It means everyone is equal in the eyes of law, and must be treated equal and as per the law, they must get a fair and public hearing by independent and impartial tribunal. And this fair and public hearing will determine the rights and obligations of that individual and the criminal charge against him. Article (11) of UDHR: Article 11 of the UDHR deals with the presumption of innocence and reads as follows: 1. "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence" In simple words, no one can be proven guilty or can not be penalized before the compilation of legal procedure against him, and he will be presumed innocent until it is proved that he commits that particular offence. Every person is innocent until it is not proved that he commits that crime, and for proving him guilty lawful procedure must be adopted against him, a fair trial must be started against him. 2. "No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal

offence was committed” Article 11(2) of the UDHR deals with the ex post facto laws i.e. laws that provide for the infliction of punishment upon a person for some prior act that, for example an ex post facto law can make something illegal that was legal when it was committed. In simple words a person cannot be punished for an act which becomes illegal but after it’s commission not at the time when it was committed. However some countries allow ex post facto laws in certain situations, especially if they make the law more lenient or beneficial for the accused. Illustration Ali is arrested on July 1, 2014, for defaming Bilal in County Zimbabwe. At that time when Ali was defaming bilal, Defamation was not a crime there, it was just a Civil wrong, On 15 August, the Parliament of concerned Country passes a law that defamation is crime, but now Ali cannot be penalized for defaming Bilal, because his action was not a crime at the time of its commission.

**Under International Covenant on Civil and Political Rights(ICCPR):**

The ICCPR was adopted by the UN General Assembly in 1966 and come into force in 1976. As of December 2013, 167 countries have ratified the ICCPR. The ICCPR is an international human rights treaty. The ICCPR is a document which provides a collection for Civil and political rights of individuals. The ICCPR recapitulate the stipulations of the UDHR in sense of right to Fair trial and equal protection of law. The ICCPR incorporate Preamble and 53 Articles, these articles are divided in six parts, Article 14 encircle the Right to Fair trial and equal treatment/protection of justice. In ICCPR it is clearly mentioned that in case of criminal charge, the accused person has the right to have following below mentioned guarantees without any prejudice or differentiation; Article 14 • Right to a Fair and Public Hearing: This means that when you go to court, your case should be heard fairly, and the proceedings should generally be open to the public. This will ensure glassiness and answerability in the judicial proceedings. • Right to be Presumed Innocent: You're considered innocent until proven guilty. In the criminal cases , burden of proof is on the prosecution to demonstrate your guilt, and you don't have to prove your innocence. • Right to be Informed Promptly and in Detail of the Charges Against You: This means you have the right to know exactly what you're being accused of, so you can prepare your defense. • Right to Have Adequate Time and Facilities to Prepare Your Defense: You should have enough time and resources to gather evidence, consult with your lawyer, and prepare your case effectively. • Right to Defend Yourself or to Have Legal Assistance of Your Own Choosing: You can either represent yourself or have a lawyer represent you. If you can't afford a lawyer, one should be provided for you. • Right to Examine Witnesses Against You and Obtain the Attendance and Examination of Witnesses on Your Behalf: You have the right to question witnesses who testify against you and to present your own witnesses to support your case. • Right Not to be Compelled to Testify Against Yourself or to Confess Guilt: You can't be forced to say anything that could incriminate you, and you can't

be coerced into confessing to a crime. • Right to Legal Assistance for Free in Certain Cases: If you can't afford a lawyer and your case is serious enough (like in criminal proceedings), the government should provide you with a lawyer for free. • Right to Appeal to a Higher Court: If you're convicted, you have the right to appeal the decision to a higher court, which will review the case and determine if any errors were made during the trial. • Right to Compensation for Wrongful Conviction: If you're wrongfully convicted, you have the right to seek compensation for the time you spent in prison or any other losses you suffered as a result of the wrongful conviction. These rights ensure that individuals are treated fairly and have a meaningful opportunity to defend themselves in legal proceedings. • No one shall be punished or tried for an offence for which he or she has been already punished or convicted according to the legal procedure of concerned County. (a) To be promptly and in detail in a language which he understands of the nature and cause of the charge against him. (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing. (c) To be tried without undue delay. (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; it addresses the issue of payment of legal assistant by the accused person in criminal charge against him, if the charged person cannot afford or doesn't have sufficient means to support himself by hiring a legal assistant or in case of the payment of legal assistant, the state is required to provide it free of charge, if the interest of justice demands so. (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. (f) Individuals has the right of free assistance of an interpreter or translator if he cannot understand or he cannot speak the language used in court.

#### **Right to fair trial under the Constitution of Pakistan.**

Constitution of Pakistan includes several articles related to the right to a fair trial. Here's a simplified explanation of some key points: Article 10: This article states that every person has the right to a fair trial and due process of law. It ensures that no one can be arrested or detained without being informed of the charges against them and given the opportunity to defend themselves. It ensures that: Every person who is arrested must be informed of the grounds for their arrest. They must be given the opportunity to consult and be defended by a legal practitioner of their choice. They must be produced before a magistrate within 24 hours of arrest, excluding the time necessary for the journey. They have the right to be treated in accordance with law during detention. They have the right to challenge the lawfulness of their detention before a court. This article let us know about the right of a person who is arrested, Article says that the person who is arrested must be informed that why he is being arrested, he has the right to know the reason behind his arrest, means he shall not be detained in custody without being

informed, custody is determined by the court, and arrested person shall be produced before a magistrate within twenty four hours and such arrested person has the right to consult and be defended by the legal practitioner of his will, But all above mentioned rules doesn't apply in case of preventive detention. In Criminal Justice system (Preventive detention); Article 10 play a pivotal role in criminal justice system, Preventive detention means a person is detained and arrested, to prevent him from committing that particular prohibited act or crime for public welfare, integrity, Security, defence, external affairs of Pakistan, and maintenance of services and supplies, for three months only. But if Review Board view this matter and suggest for further detention then the arrested person can be detained for more time, Review Board must fairly look into the case, the arrested person has the right to fair trial, according which he has the right of expression in front of Board members, the Review Board will listen to him and make a proper report of such case, and Board can direct that either arrested person shall be detained or be released. The appropriate Review Board shall determine the place of detention of the person detained, Board will also fix the amount of reasonable maintenance for his family.

**Article 10-A: Constitution of Pakistan:**

This article was added through the 18th Amendment to the Constitution in 2010. "It specifically guarantees the right to a fair trial, stating that "For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process." It emphasizes the right to legal representation and a fair trial within a reasonable time. Components of right to Fair trial: A fair trial is a fundamental aspect of justice in legal systems around the world. It ensures that individuals accused of crimes are given a fair and impartial hearing, with the opportunity to present their case and defend themselves against allegations. The components of a fair trial can vary slightly depending on the legal system, but generally include the following. Presumption of Innocence: This component means that a person will be considered innocent and virtuous unless he is not proven guilty beyond the doubt on him, It places the burden of proof on the prosecution to demonstrate the defendant's guilt rather than on the defendant to prove their innocence. The presumption of innocence is a foundational element of fair trial, ensuring that individuals are not unjustly punished without sufficient evidence. 2. Impartial Tribunal: A fair trial requires that the case be heard by an impartial and unbiased judge or jury. This means that the decision-makers must not have any personal interest or bias in the outcome of the case. Judges and jurors are expected to base their decisions solely on the evidence presented and the law, without any external influence or prejudice. 3. Right to Legal Representation: Defendants have the right to legal representation to ensure that they can effectively present their case and navigate the legal process. This includes the right to be represented by a lawyer of their choice or, if unable to afford

one, to have legal counsel appointed to them. Legal representation helps to balance the often unequal power dynamics between the accused and the state. 4. Right to a Public Trial: In many legal systems, trials are required to be conducted in public, allowing members of the community to observe the proceedings. Public trials promote transparency and accountability in the justice system, as well as safeguarding against abuses of power. However, there may be exceptions to this rule, such as cases involving sensitive information or minors. 5. Right to Confront Witnesses: Defendants have the right to confront and cross-examine witnesses presented against them. This allows the defense to challenge the credibility and reliability of witness testimony and to uncover inconsistencies or falsehoods. The opportunity to confront witnesses is essential for ensuring a fair and rigorous examination of the evidence. 6. Right to Compulsory Process: Defendants have the right to compel the attendance of witnesses and to present evidence on their own behalf. This right ensures that defendants have the opportunity to gather evidence and witnesses that may support their case and to challenge the evidence presented by the prosecution. It helps to balance the adversarial nature of the legal process. 7. Right to Remain Silent: Defendants have the right to remain silent and not to incriminate themselves. This right, often referred to as the right to silence or the privilege against self-incrimination, protects individuals from being compelled to testify against themselves. Defendants cannot be punished for exercising this right, and their silence cannot be used as evidence of guilt. These components collectively form the bedrock of a fair trial, ensuring that defendants are afforded the opportunity to present their case, challenge the evidence against them, and receive a fair and impartial hearing before an independent tribunal. They are essential for upholding the principles of justice and protecting the rights of individuals. In article 10A fair trial means all such above mentioned components must be included in a trial, if any of such components is missing then the trial will not be the transparent and fair as well.

#### **Challenges in ensuring Fair trial:**

- Lack of Legal representation: Some people may not have access to a lawyer to help them , understand their rights and present their case effectively.
- Biased Judge or Jury: Sometimes, the judge or jury may have personal biases or prejudices that effect their ability to make fair decision.
- Limited Access to Evidence: If someone don't have access to all the evidence that could help their case, it can be hard for them to defend themselves properly.
- Language Barriers: If someone doesn't speak the language used in the court room, they may have trouble in understanding what's happening and communicating effectively with their lawyers.
- Inadequate Time to prepare: Sometimes people don't have enough time to prepare their case properly, which can make it difficult for them to defend themselves effectively.
- Corruption or Bribery: In some cases, Corruption and bribery can influence the outcome of a fair trial, leading to unjust



verdicts. • Unequal Treatment: people from certain backgrounds or communities may be treated unfairly by the legal system due to discrimination and systematic bias.

**Conclusion:**

The right to Fair trial is mentioned in National and as well as in global laws, countries follow such laws and implement these provisions in their trial procedures, Although there are some hurdles in it's absolute implementation, which creates complications for the assurance of fair trial assurance of fair trial, but these issues can be resolve through the system of check and balance and Rule of law. Government institutions and law implementing agencies should play their role in implementing laws and they must assure the access of justice to every individual there under.

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