

**RESEARCH PAPER****An Analysis of Pre-Trial Fair Trial Rights and International Standards****¹Khalid Mehmood ² Muhammad Shahid Sultan and ³ Hafiz Muhammad Azeem***

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ABSTRACT

The right to a fair trial is a foundation of any successful criminal justice system (CJS). This paper examines pre-trial fair trial rights that are being used within our national CJS through a comparative analysis of these rights with well-established international standards. Right to fair trial (RFT) works throughout three stages: pre-trial, trial, and post-trial, yet this paper identifies key elements of RFT in pre-trial stage of a criminal trial only. This study conducts by using a qualitative approach for an across-the-board analysis of relevant international and national legal provisions and landmark cases, with an aim to provide a detailed understanding of pre-trial RFT in our current legal landscape. This paper concludes that to ensure that our national fair trial rights effectively uphold the principles of justice, it is imperative to amend procedural laws keeping in due regard to international legal standards.

Keywords: Article 10-A, Criminal Justice System, Fair Trial, International Fair Trial Rights, Pre-trial Rights

Introduction

Over time, criminal legal systems have evolved significantly. Fair trial was and is a part and parcel of every legal system (Stone, 2018, p.103), both national and international legal system (McDermott, 2016). They have shifted from rigid and often harsh practices to those that are embracing more human rights standards and are upholding a transparent justice system through RFT. The concept of a RFT has been integral to every legal system throughout history. Various legal codes and theories have been developed by civilizations to uphold this fundamental principle (Office for Democratic Institutions & Human Rights, 2012). Particularly, the Magna Carta, which was established by King John of England in 1215, and the Bill of Rights of 1688, had laid the groundwork for RFT for the current CJSs in the world (Lillo Lobos, 2022). The RFT is now a widely recognized value; It has been guaranteed by numerous legal documents worldwide. The Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the European Convention on Human Rights (ECHR) all affirm this essential right (Weissbrodt, 2021).

In the context of Pakistan, the 'Objective Resolution' which was adopted in 1949 is said to be considered as the foundation for the creation of RFT in our national CJS because it was hailed by Liaquat Ali Khan as the 'Magna Carta of Pakistan' (Ahmer, 2016). The present Constitution of Pakistan, under Article 10-A (A10), guarantees the RFT and due process in criminal proceedings (Constitution of Pakistan, 1973). This constitutional guarantee includes several key rights: the right to a fair and public hearing within a reasonable time with the presumption of innocence and with information of the criminal charges having a time to prepare a defence and with all reasonable doubts determined in favour of the accused, etc (Giwa, 2023).

The RFT has been given substantial importance within international human rights standards (McDermott, 2013). It has deeply rooted in key legal international documents and international human rights treaties. Adherence to these standards for the safety and implementation of the RFT is crucial to ensure due process for all. These standards include various other essential rights such as the right to be informed of offences, the right to representation, and the right to cross-examination, etc. Though some principles are derived from treaties and some from non-treaty instruments: yet all they collectively reflect the international consensus on these principles and standards that all democratic states are obligated to adhere to. It has now become a portion of customary international law. Together, all these principles, standards, and jurisprudence create a comprehensive international standardized framework that provides essential safeguards against unfair trial practices in CJSs (Lubis, 2023).

The RFT has now become a fundamental right for the citizens of Pakistan. Yet its scope is still continued to evolve within the realm of international human rights standards. As a signatory to various international human rights treaties and conventions, Pakistan is obligated to uphold and ensure the RFT, throughout three stages: pre-trial, trial, and post-trial, within its CJS (Shaikh, 2022). This study focuses on examination of the RFT in Pakistan. The main objective is to compare its alignment and compliance with international standards and to identify areas for improvement. This will be conducted through an extensive analysis of relevant legal principles—both national and international—case-law-based jurisprudence, and the domestic practices. The study will also uncover gaps and challenges within CJS of national legal framework about the implementation of the RFT. The findings of this study will contribute to the continuing discourse on human rights and will aid in promotion and the advancement of RFT in Pakistan. This study is anticipated to provide valuable insights for policymakers, legal practitioners, and scholars who are dedicated to enhance the protection of the RFT and to strengthen the CJS of Pakistan.

This research mainly uses a qualitative approach to explore the pre-trial RFT of an accused person keeping in due regard to the international standards and their application within the national CJS. This study has used a qualitative approach which is particularly well-suited for this investigation because it has allowed us for an in-depth examination of the international standards and our national legal framework and interpretations about these rights. Thereafter, through thematic analysis of legal materials, including books, articles, journals, research works, relevant case law, Pakistani statutes, and international treaties, this research has identified and analyzed the key themes and principles which are associated with pre-trial RFT in both international and domestic contexts.

International Standards of Right to Fair Trial

The RFT has now evolved from just a good idea stage to a human right documented and enshrined by all national and international laws (Langford, 2009). There are many important legal instruments like the UDHR and the ICCPR that also recognize this right. These international standards and now considered as international legal principles. They ensure not only the due process in one stage but throughout all stages of a criminal trial (Harris, 1967). These principles ensure fair legal procedures. On the international legal side, these principles and standards are established through treaties and widely accepted practices (McDermott, 2016). These instruments show a worldwide agreement on what makes a RFT in all three stages of a trial. This consensus obliges all states to generally follow these principles by all of them, even if they have not formally signed certain treaties.

Legally binding treaties like Covenants, Conventions, Charters, and Protocols enshrine the RFT. Such as the UDHR, ICCPR, (Weissbrodt, 2021), the American Convention on Human Rights, and the African Charter on Human and Peoples' Rights (Udombana, 2006). Additional treaties include the ECHR (Loucaides, 2003; Vitkauskas & Dikov, 2012), Arab Charter on Human Rights, (Al-Subaie, 2013), the European Convention for the Protection of

Human Rights and Fundamental Freedoms European (Brems, 2005), the Convention on the Elimination of All Forms of Discrimination against Women, and the International Convention for the Protection of All Persons from Enforced Disappearance, etc. all these ensure fair trial rights within their specific contexts. Non-treaty standards play a vital role in the international framework for the RFT. Instruments like the Basic Principles on the Independence of the Judiciary, the UN Guidelines on the Role of Prosecutors, also provide important guidelines in the context of RFT, even though they are not legally binding. (Amnesty International, 2014). Furthermore, under international humanitarian law, through the Geneva Conventions, Additional Protocol I, and the Rome Statute of the International Criminal Court, the RFT is recognized and protected for accused of serious crimes such as war crimes and genocide (Cogan, 2002; La Rosa, 1997).

Pre-Trial Fair Trial Rights

The pre-trial segment of criminal proceedings is a critical stage that establishes the groundwork for a fair trial in a CJS (Jackson & Summers, 2018). The RFT constitutes a fundamental aspect of any democratic society (Duff, 2004). Pre-trial rights play a vibrant role in preserving the integrity and fairness of trial proceedings and due process of law (Clooney & Webb, 2021). Pre-trial rights in a RFT include the right to liberty, information, legal counsel, appearance before a judge, contesting the legality of custody, trial within a judicious time if not then release, suitable time to make a defence, and humane detention conditions (McDermott, 2016). Furthermore, the right to contest the legality of custody is another aspect of fair trial right (Heard & Fair, 2019). Strict adherence to these rights is vital and it can be used as a potential tool to put pressure on state to ensure justice.

Moreover, there is also a need to discuss the right of accused persons who are under trial to get the trial completed within a judicious time or to get liberation through bail. Though this right is recognized in Pakistan under the Code of Criminal Procedure, 1898 (CrPC), however, the analysis will evaluate the Pakistani legal framework and practices to assess the extent to which this right is protected. The right to suitable time to formulate his defence case will also be examined. Lastly, this study will also discuss the rights of accused to humane confinement situations and freedom from torture and ill-treatment. Another aim of this research is to call concerned policymakers to take more steps in order to guarantee that all accused persons are able to enjoy their pre-trial rights, through amendments in laws.

Pre-trial rights in the background of RFT include the right to liberty, information, legal counsel, swift arrival before a judge, recourse and remedies to contest the legalities of custody, trial within a judicious time, right to liberation, suitable time to formulate a defence, and humane detention conditions (McDermott, 2016, p. 41-101). These rights protect against accused persons from arbitrary detention; they ensure access to information, guarantee legal representation, and prevent prolonged detention without judicial oversight. Further they also allow accused persons right to contest legality of detention. Following are the rights:

Right to liberty

Liberty is the primary right in the context of RFT. The constitutional provisions in Arts. 4 and 9 safeguard the right to liberty (*Munir Ahmed v. The State 2024*). These rights also extend to the realm of pre-trial arrest and custody; therefore, it must be approached with caution and sensitivity. Though powers to arrest too have been recognized in the law and they have been given to ensure rule of law, yet, under no circumstances should these power could be exercised capriciously (*Usman Ali v. The State 2023*). Thus, arrest must always be justified not only by prima facie evidence and sufficient actionable material that is linking the accused person with the alleged crime but also through demonstration of the absence of less invasive substitutes. It is essential to prevent the misuse of arrest, especially as a tool for oppression or harassment. Adequate incriminating material is required in

worldwide best practices to justify the deprivation of liberty. Arbitrary exercise of the power to arrest amounts to abuse of authority. In cases where liberty and dignity is at stake, there the courts of law must subject the case with strict scrutiny. The principle of proportionality, reasonableness, and the principle of necessity should serve as the touchstone for in order justify deprivation of liberty (*Khawaja Salman Rafique and another v. The National Accountability Bureau 2020*).

Furthermore, the CrPC is the main law that is governing trial procedure in our national CJS. It was enacted by the British colonial administration and since then it has been amended several times. It provides a number of mechanisms for the protection the right to freedom of an accused together with the bail jurisprudence (Sherwani, 2019). The CrPC provides two types of bails: one, for bailable offences, which are offences for that the accused is entitled to be liberated on bail as a right; second, non-bailable offences, which are those offences for which the accused is not entitled to be liberated on bail as a right. However, the law court may grant bail in a non-bailable offences (Razzaq et al., 2023; Zahoor et al., 2022b, 2022a).

Bail under jurisprudence of law is a discretionary power of the courts. The decision to grant or deny it is grounded on multiple aspects such as the nature of the offence, evidence against the accused, probability of absconsion, or interference with the evidence or the investigation, and the potential threat to public safety. Bail can be granted subject to conditions. Further the court can also review or revoke bail orders if circumstances are changed or conditions are violated (Zahoor et al., 2022a). The court exercises its discretion keeping in due regard to the principles of justice and fairness (See, *Muhammad Bashir v. Station House Officer, Okara 2007*; *Mst.Sughran v. The State 2018*; *Liversidge v. Anderson (1941) 3 All E.R 338*; *Arnesh Kumar v. State of Bihar and another 2014*; *Moti Ram and others v. State of Madhya Pradesh 1978*; *Siddharam Satlingappa Mhetre v. State of Maharashtra and others 2011*; *Zaigham Ashraf v. The State 2016*; *Tariq Bashir v. The State 1995*).

Right to information

In the context of RFT, it is imperative that accused who is under custody is expeditiously apprised from all of the grounds that are being used to justify his confinement (ICCPR, Art. 9(2)). Moreover, it is also important that he is promptly and comprehensively notified about his legal entitlements. This includes the right to legal representation. These notifications will enable him to effectively contest the legality of his own arrest or custody before courts. Our Constitution ensures this right as well (Constitution of Pakistan, 1973, Art. 10).

The importance of this right can be gauged from a case, wherein, when a conviction in absentia under terrorism laws in Pakistan is challenged, then the Court in opined that the trial conducted in absentia is violation RFT and right to information of accusations to the accused. One of the key factors that lead the court to this decision was the lack of opportunity for the appellants to be heard, which also goes against the principles of natural justice. The Court highlighted that such a trial was contrary to the principles of RFT (*Mir Ikhlaq Ahmed v. The State 2008*). Furthermore, to effectively exercise one's rights, it is essential to have awareness of their existence (Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 13). International standards dictate that such accused persons must be informed of their rights and they must be provided with a clear clarification of how they can access and utilize those rights. However, in Pakistan, there is no such provision which is available under CrPC which compels the investigation agencies to explain the accused under arrest how to utilize his rights.

Right to Legal Counsel

This right is also guaranteed by the Constitution of Pakistan (Art. 10). Accused who are being deprived of freedom or who are facing criminal charges have the right to legal counsel to defend their trial rights and to get aid in their defence. If such an accused do not have an advocate that too of their selection, then he is entitled to have a competent assigned counsel at the cost of state (Basic Principles on the Role of Lawyers, 1).

In Pakistan, in a case, when a suspect was not afforded chance to be defended by a advocate during his case proceedings, the court opined that the it is an unassailable right of every citizen when facing a trial. It is a part of due process. It is a part of RFT. The court observed that a RFT includes in it fair and proper opportunities, as prescribed by law, to establish their innocence. The denial of the right of the accused to produce evidence through his counsel in support of their defense would amount to a denial of a RFT. Similarly, the Indian Supreme Court aptly observed that the denial of a RFT is an affront to human life and it is a desecration of human rights as well. The court stressed that a RFT is the cornerstone of criminal jurisprudence. It has now become an indispensable factor of a democratic social order. The denial of a RFT constitutes a breach of due process (*Rattiram v. The State of M.P. through Inspector of Police 2012*). Today, every individual has the RFT. It is has included in principles of the right to life and personal liberty (*Muhammad Hussain v. The State (Govt: Of NCT) Delhi 2012*).

Right to be brought promptly before a judge

Upon arrest, accused persons are supposed to be promptly presented before a competent judge to follow the procedural safeguards. The court is in control to regulate the legality of the arrest. It also decides whether the accused should be released or he should be held in custody till the completion of trial. The general presumption with regards to the procedure is that he should be released in case of his pending trial, however, if not then the burden lies with the state to prove the legality of the initial arrest or justifications for proportionality of continued detention. This is now a universally accepted fair trial standard (ICCPR, Art. 9(3))

In Pakistan, section 61 CrPC read with Art. 10(2) of the Constitution covers this right. This RFT bound the police to produce him before Magistrate within twenty-four hours. The courts have elaborated the complete law which is as follows: when an investigating officer (IO) seeks sanction to detain an accused outside the prescribed parameters of law, then an application must be made in accordance with the provisions of section 167 of CrPC. This provision permits the Judge to extend the custody for a maximum period of fifteen days. However, if no case is established for this custody, then the court is justified to deny the remand and discharge the accused: section 63 CrPC. Further, if the IO concludes that the accused is innocent then nothing forbids the IO from applying for the discharge of such accused (*Nazir Ahmad v. The State 1987*).

Briefly, statutory law stipulates that the initial investigation should be concluded within 24 hours of the arrest, with an additional 14-day period for the trial to begin. Postponement of the trial beyond this 15-day time-period can only be justified in exceptional circumstances. The courts have consistently observed that having a custody beyond this time limit, without the submission of a complete investigation report and without convincing reasons, is unlawful. Strict adherence to these RFT is necessary (*Ashfaq Ahmad alias Shakoo v. The State 1989*)

Right to challenge the legality of custody

This right has now been considered as a human right. It has been documented in international human rights instruments as well (Body of Principles for the Protection of All

Persons under Any Form of Detention or Imprisonment, 32). In simple words, this right means that anyone who is deprived of freedom has the right to contest the legality of custody before a court. And in numerous legal systems, this is invoked through 'habeas corpus' petition (Farbey et al., 2011; Farrell, 2017). In Pakistan this right is available under section 491 CrPC and under Article 199 of the Constitution (Qureshi et al., 2023).

This is now considered one of the inalienable rights of every citizen of Pakistan. The court opined that RFT guarantees that no one is to be deprived of liberty except after RFT. Any unlawful custody of a citizen without adherence to RFT would amount to a violation of the fundamental rights guaranteed under Articles 2-A, 3, 4, 9, 14, and 18 of the Constitution (*Muhammad Irshad v. Government of the Punjab 2020*). Therefore, preventive detention as well held to be challengeable (*Abdul Latif Shamshad Ahmad v. District Magistrate, Kasur 1999 PCrLJ 2014*, n.d.; Sultan et al., 2024).

Right to trial within a reasonable time or to release

Within the context of RFT, accused persons held in pre-trial detentions have the right to have their trials conducted within reasonable time (ICCPR, Article 9(3)). This right protects them from unnecessary delays. It ensures that they are not unduly held in custody for uncertain period without a trial. If the prosecution fails to complete the trial within a reasonable timeframe, then such accused possess the right to be released from custody during the pendency of their trial, generally in the form of a bail. This aspect of RFT maintains their presumption of innocence till completion of proceedings (Clooney & Webb, 2021, p. 389–444).

In our national laws, the section 497 of CrPC covers this aspect of RFT. The principle is known as the 'statutory ground of delay' in our jurisprudence. Under this scenario in order to establish a case for refusal of bail on the basis of statutory ground, the prosecution is required to present convincing evidence before the Court that a deliberate and concerted effort was put by the accused or their counsel to unduly prolong the trial proceedings. Furthermore, the prosecution would also substantiate the claim that if the accused is released then he would pose a grave and considerable danger to the safety of society. And when prosecution fails to convince the court, then bail is accepted (*Anyi Sundy v. The State 2023*). The courts are of the view that the entitlement to be released on bail, as provided for by statute, is derived from the constitutional rights of RFT. The fundamental purpose of this RFT is to ensure the expeditious trial and to prevent the pre-conviction detention (*Amir v. The State PLD 1972*). The timely conclusion of trial is now considered as an inherent right. The delay in the delivery of justice has the potential to undermine public confidence in CJS (*Sher Ali alias Sheri v. The State 1998*)

Right to time to prepare defence

Another fundamental concept of a RFT is the inherent right of accused to be afforded passable time to formulate their defences. Adequate time allows them to gather evidence, to make consultation with legal counsels, and to formulate a defence policy (ICCPR, Article 14(3)(b)). Furthermore, this right requires that accused persons are promptly informed about the nature of the charges. International standards, including Article 9(2) of the ICCPR, also stress on the obligation of states to provide accused under custody with complete information about the charges.

As for the national CJS, this right is also recognized and protected under the Constitution: Art. 10-A specifically talks about the RFT and affords a 'full and fair' opportunity to present the case. However, it is important to note here that the CrPC does not provide any special independent provision which specially deals with this right to adequate time to prepare defence.

Freedom from torture and ill-treatment

Freedom from torture and other ill-treatment is another aspect of RFT. It is also protected under international human rights standards: The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Further there also other key international instruments which ensure this right, such as the Article 5 of the UDHR, Article 7 of the ICCPR, Article 2 of the CAT, Articles 37(a) and 19 of the CRC, Article 5 of the African Charter, Article 5(2) of the American Convention, Articles 1 and 2 of the Inter-American Convention against Torture, Article 8 of the Arab Charter, Article 3 of the ECHR, etc. These standards prohibit torture and ensure dignity and respect. This right is absolute and it applies unanimously. It is not only a duty of the nations to prevent torture and other ill-treatment within their own territory but also anywhere in the world. These principles are essential in order to ensure human dignity and protection of individuals from any form of torture or inhumane treatment (Buckley et al., 2022)

Our domestic CJS also prohibits torture and inhuman treatment. It is important to mention a case here, wherein under section 26 ATA a confession was made by accused before a police officer. The court critically examined this provision. It highlighted the importance RFT that an accused cannot be forced to be a witness against himself. The court emphasis that RFT is fundamental and should be upheld under all circumstances (*Mehram Ali and others v. The Federation of Pakistan and others 1998*). Our legislature has also taken steps to address this issue. They have enacted specific legislation to curb this menace: The Torture and Custodial Death (Prevention and Punishment) Act, 2022

Conclusion

In conclusion, the pre-trial phase of criminal proceedings holds immense significance in CJS. It established the foundations for the fair trial. The comprehensive analysis of pre-trial rights presented in this study demonstrates their integral role in CJS. RFT plays active role in pre-trial rights. Implementation of RFT is a benchmark for successful CJS. These rights collectively safeguard accused persons against unjustified custody, facilitate them to prepare effective defence, and prevent any inhumane treatment in pre-trial stage of CJS. It is important for our policymakers to adhere to the above referred international human rights standards and to take necessary actions for the amended of CrPC in order to guarantee the protection and enjoyment of pre-trial rights for all accused persons. Through this our CJS can strive towards a more fair and just pre-trial process.

Recommendations

Keeping in due regards to the above referred discussion, it is recommended that the CrPC may be amended to align it with international standards in order to ensure comprehensive cover of RFT. Though the constitutional interpretations provide coverage to many aspects of RFT, yet the CrPC does not include all necessary foundations of pre-trial RFT. If we compare with the Indian CrPC then it shows that the same has been updated to include several RFT aspects, particularly in its sections 50 and 50A. In light of the preceding discussion, it is recommended that our procedural laws should be revised to specifically address pre-trial RFT, together with the right to liberty, information, legal counsel, access to the outside world, appearance before a judge, right to contest the legality of custody, trial in a judicious time, right to liberation, time to prepare a defence, and freedom from torture and ill-treatment before trial. Therefore, it is imperative that the our national CJS is amended to uphold similar provisions, to guarantee a RFT for all.

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