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CONSTITUTIONAL PROTECTION OF WOMEN'S RIGHTS IN PAKISTAN WITH A PERSPECTIVE OF FAIR TRIAL RIGHTS

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ABSTRACT

In Pakistan, the Constitution ensures equality, dignity, and due process for all its citizens, but there is a huge mismatch between the reality of women's experience in criminal and civil justice systems and the actual practice of the system. The constitution and statutory law protecting women's rights in Pakistan are explored in this article with emphasis on provisions of fair trial under Article 10A of the Constitution, in conjunction with Articles 4, 8, 9, 14 and 25 of the Constitution. It discusses the evolution of these guarantees in key Supreme Court and High Court decisions involving marriage by choice, honor-based violence and the end of virginity tests in cases of sexual violence. The analysis shows that while constitutional and legislative reform has greatly advanced, the implementation of these changes has been significantly lagging, particularly in relation to the ability of women as accused, victim, witness and litigant to enjoy meaningful access to fair trial rights. It sets out the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination against Women, and other similar models as parallels for Pakistan and enumerates the lessons to be learned for Pakistan. It finds that coordinated reform of the training of police officers, forensic protocols and evidentiary procedures, judicial capacity, and legal aid facilities and accountability mechanisms is needed to address the gap between guarantee and practice, not just more declaratory legislation.

Keywords: *women's rights, Constitution of Pakistan, fair trial, Article 10A, access to justice, gender-based violence, CEDAW, criminal justice reform*

1.INTRODUCTION

The protection of women's rights in the Constitution of Pakistan is unique in that it is one of the better elaborated constitutional rights and one of the less consolidated areas of its implementation (Siddique & Hussain Shah, 2023). The Constitution of the Islamic Republic of Pakistan 1973, as amended, explicitly and clearly prescribes equality and non-discrimination in Article 25, dignity and liberty in Articles 9 and 14, and an express and independently justiciable right to a fair trial and due process in Article 10A following the Eighteenth Constitutional Amendment 2010. (Gondal & Hatta, 2024). These, together with the Principles of Policy in Article 34, 37 and 38, which call for the full participation of women in national life, represent a constitutional promise of substantive, and not formal, equality between men and women before the law (Nawaz et al., 2024). But a constitutional guarantee is not a law unto itself. Gender equality and access to justice are not just issues of theory; they impact whether a woman who has been raped can have access to a timely and dignified medical exam; whether a woman is accused of a criminal offence can access competent legal representation; whether a woman testifying against a dominant

family or community member will be protected from retaliation; whether a woman litigating a custody, inheritance, or matrimonial dispute encounters a judiciary and bar that is sensitive to her situation, rather than perpetuating the same social biases she is seeking to overcome (Gul et al., 2025). Fair trial guarantees are not a by-product of women's constitutional rights; rather, they are procedural means by which substantive rights of equality, dignity, and protection of law are realized or are empty promises (Ahmad & Bhatti, 2023).

The Supreme Court and High Courts, in cases like the Saima Waheed marriage-by-choice controversy, the trial of the Humaira Mehmood, the long-term trial of the gang-rape case of Mukhtaran Mai, and the High Court's decision to do away with the two-finger virginity test in 2021, have, in various ways, expressed the nature of women's constitutional right to dignity and fair treatment (Shaikh, 2024). However, several facts suggest that the formal equality is not reflected in functional equality in the justice system, such as assessment of conviction rate in GBV cases from the Pakistan Demographic and Health Survey, human rights reporting by the Human Rights Commission of Pakistan, and recent judicial and prosecuting data on convictions in GBV cases ("The impacts of violence against women on choice and agency: Evidence from Ghana and Pakistan," 2021).

CONSTITUTIONAL AND LEGAL FOUNDATIONS OF WOMEN'S RIGHTS IN PAKISTAN

Constitutional Guarantees of Equality and Non-Discrimination

The guarantee of equality is mentioned in Article 25, stating that "All children and citizens are equal before the law and have a right to equal protection from it; there shall be no discrimination on the basis of sex alone (Ali, 2022). But according to Article 25(3), it can be limited to create a special provision not breaching equality and not an exception to the equality norm targeting a specific group of citizens: women and children. Article 27 provides for extending the principle of non-discrimination to public employment, considering reservation of posts for women if its presence is not in proper ratio ("Constitution of the Islamic Republic of Pakistan, 1973 (as amended)," 1973). The principles of policy include, in part, Article 34, which requires the state to take measures for the full participation of women in all aspects of the nation's life; Article 37(e), which guarantees security of appropriate employment; and Article 38(a), which guarantees the well-being of the people irrespective of sex. This commitment has further been operationalized by the reserved seats for women in the National Assembly and Provincial Assemblies in Article 51 and 106 (Gondal & Hatta, 2024).

When carefully analyzed, this building is an interesting asymmetry. Article 25 is a justiciable fundamental right that can be recognized by Articles 199 (High Court writ jurisdiction) and 184(3) (Supreme Court original jurisdiction in matters of public importance involving fundamental rights) while Articles 34, 37 and 38 are Principles of Policy which are non-justiciable in the sense that no court can strike down legislation for being inconsistent with them (Ali, 2022). However, the Pakistani superior courts have on many occasions invoked the Principles of Policy to interpret fundamental rights, which it has held to be a way of interpreting the commitments of the underlying constitutional order, even in cases where there is no independent cause of action. The courts have, in recent times, interpreted 'the equality' of the terms of Article 25 to mean much more than what is written in the document, and this has been the case on a few occasions (Zia & Hassan, 2023). However, research into the 'textual architecture' of the Constitution has noted that an underlying assumption of equality also remains even in constitutionally protected equality provisions such as the subject of 'women and children' in articles 25(3) and 35, which are protected together, but in such a way that they do not appear to be rights-holders themselves. This is a linguistic choice that, in some parts of the scholarly discussion about the Constitution, is said to subtly reinforce rather than challenge patriarchal categorization of women (Ahmad, 2023). The doctrine of Article 25 has also been put to the test in non-traditional gender binary suits. In *Dr. Muhammad Aslam Khaki v. S.S.P. (Operations) Rawalpindi*, the Supreme Court acknowledged the fundamental rights of transgender persons, such as the right to equal protection of law, and demonstrated that the Court had the care and concern for the misfits in society that went beyond its traditional context to ensure the enjoyment of the right to equality under Article 25 (Ahmad & Bhatti, 2023).

Protection of Women's Dignity, Liberty and Legal Rights

Apart from the equality guarantee, there are also general provisions in the Constitution on dignity and liberty in Article 9 and 14 that protect women. The right to life and to live free from oppression is guaranteed by Article 9, a right that Pakistani courts have been extracting more than the right to physical life, but also the right to a life with dignity (Abdullah, 2023). Article 14 reads: The dignity of man is inviolable, and the privacy of the home is inviolable and subject to the law. These provisions enabled constitution-makers to provide language with which courts have responded to practices involving the use of women's bodies in the administration of justice. The provincial health departments in Punjab and Sindh ordered an end to virginity testing, and the Supreme Court later ruled that virginity testing was irrelevant to sexual violence cases. The significance of this case lies not only in the result, but in the way: the case showcases the use of the guarantees of dignity and equality in the concrete context of a criminal trial, specifically, in the stage of the evidence and investigation (Rashid & Rashid, 2022).

Another strand of constitutional law that intersects with family law and constitutional issues of personal status is the claims to women's autonomy in marriage. In *Humaira Mehmood v. The State, the State* has attacked a woman's marriage in its case under the Zina Ordinance, arguing for the constitutionality of marriage and the state's responsibility to safeguard it, despite the parents' objections, in its favor (Abbasi, 2022). In its favor, the State has challenged the proceeding under the Zina Ordinance against a woman who married without her parents' permission, invoking constitutional equality and the responsibility of the State to protect marriage and family. The Supreme Court has finally ruled that a Muslim woman (adult and sane) can marry a man of her choice without any Wali in her name, dismissing the earlier judgment passed by the Lahore High Court in the prolonged litigation regarding the validity of the marriage of Saima Waheed in habeas corpus proceedings, while relying on the contested interpretation of the religion in the proceedings (Malik, 2023). In a recent judgment, the Supreme Court clarified that the statutory right of Muslim women to seek judicial dissolution of the marriage under the Dissolution of Muslim Marriages Act, 1939 is not an extinction of her statutory right to seek khula, and that the latter has the right to dower ("Anti-Rape (Investigation and Trial) Act, 2021," 2021). All these cases together can be said to illustrate a judicial shift, though not uniform and unmistakable, from regarding women as objects of family or community control to viewing them as capable, reliable litigants; one that bears directly on fair trial rights in the context of women's access to courts in family, criminal and civil cases.

WOMEN'S ACCESS TO JUSTICE AND FAIR TRIAL RIGHTS

Equality Before Law, Due Process and Access to Legal Representation

Article 10A inserted by the 18th Constitutional Amendment 2010 says that a person shall have the right to a fair trial and due process when civil rights and obligations are being decided or in any criminal charge (Gul et al., 2025; Munir et al., 2020). The Superior Court jurisprudence has interpreted this very broadly and interpreted it as covering the following: the right to an impartial tribunal, the right to equal protection, the right to be heard, the right to legal representation, the presumption of innocence and protection against arbitrary detention, and is an integral part of the constitutional guarantee of dignity under Article 14. Scholarly commentary has also pointed out that the judiciary has not been as consistent and responsible as it seems to be at articulating the precise doctrinal content and enforceable limits of Article 10A as the rhetoric of the provision has suggested, and has given considerable scope for interpretation to lower courts (Kasuri, Mahmood, et al., 2024).

For women particularly, the guarantee of equality before law under Article 25 must be interpreted in conjunction with the guarantee of fair trial under Article 10A, which means that “fair trial” cannot be “fair”, if one category of litigants faces a greater disadvantage in having access to legal representation, understanding the proceedings, and having their claims believed by investigators and adjudicators (United Nations Human Rights, 2007). The legal aid system in Pakistan, in theory, is meant to redress the balance, including the federal and provincial legal aid authorities, bar association pro bono schemes, and non-governmental legal aid organizations like the Legal Aid Cell. The numbers of women in the legal profession itself speak for how it is a structural as

opposed to an incidental issue. According to a 2024 report by the Law and Justice Commission of Pakistan (LJCP), out of the total of 230,879 lawyers enrolled by provincial bar councils of Pakistan, some 17 percent were women (Law & Justice Commission of Pakistan, 2024). The professional culture, courtroom norms and informal expectations in which women's cases are argued, cross-examined and evaluated in a courtroom will be shaped by a justice system where the overwhelming majority of practitioners are male, and this has a direct impact on the 'equality of arms' principle enshrined in comparative fair trial doctrine.

Gender-Sensitive Investigation, Prosecution and Adjudication

The rights to a fair trial do not start when a case is presented in a court of law, but rather when the person first encounters the criminal justice system, usually a police station. The quality of the investigation dictates its capacity to provide evidence for prosecution and adjudication, and the way it is conducted, and encompasses the presence of special investigation units, emergency medical and legal service cells, and the time limits on investigation and trial (Kasuri, Mahmood, et al., 2024). Perhaps most importantly, though, it takes more than an institutional structure to be gender sensitive in adjudication; it takes a change in assumptions about the evidence and interpretation that judges, prosecutors, and investigators bring to a woman's testimony. Especially between having a specialized legal procedure in place and achieving a gender-sensitive outcome, an institution can look the part and yet in its operating culture be unreformed. Formally, the right to a fair trial (fair presentation of the case, cross-examination of witnesses, rational decision) is preserved but in practice is undermined by the quality of the prosecutor's representation. The formal equality guaranteed by Article 25 together with the procedural guarantee of Article 10A does not necessarily come to mean meaningful equality; this depends on the institutional ability of the actors who implement these articles as detailed in the following section in greater empirical detail.

INTERNATIONAL STANDARDS AND COMPARATIVE PERSPECTIVES ON WOMEN'S FAIR TRIAL RIGHTS

International human rights obligations have a normative aspect that can be adopted as a means in the assessment of the domestic component and also the principle of binding obligations in constitutional interpretation. Pakistan has ratified all of the relevant conventions, including the Convention on the Elimination of All Forms of Discrimination against Women (with a general declaration and a reservation under Article 29(1) of the Convention that relates to dispute resolution between states parties), and June 2010 had ratified the International Covenant on Civil and Political Rights (ICCPR) (as well as a number of reservations under the substantive articles of the ICCPR – 27 in total, including Article 3 (equal right between men and women) and Article 25 (equal access to public life) along with Article 40 (state reporting mechanism that facilitates the monitoring role of the Human Rights Committee) (Amir et al., 2023).

In its observations, the UN Human Rights Committee, in its General Comment No. 32, extended the substantive content of Article 14 ICCPR, (right to equality before courts and tribunals, to be assisted by counsel under them, to be presented to competent, independent and impartial tribunal, to enjoy a fair and public hearing, and presumption of innocence, minimum guarantees in criminal proceedings) to conclude that the right to equality before courts and tribunals requires not only a formal right to access courts, but equality of arms between the parties, meaning "practical capacity to prepare and present a case to the court equally with the other party" (United, 1966). From this point of view, it is apparent that Pakistan's marked shortfalls in terms of legal representation of women, weakness of prosecutors and inequity in socio-economic costs of the delay of litigations described in Section 4, are not only matters of policy but are also potential infringement upon the equality-of-arms principle which has been introduced into domestic constitutional law by Pakistan through Article 10A (United, 1979).

There are complementary obligations, and in some ways more particular obligations with CEDAW. Under Article 2, discrimination against women should be abolished by all appropriate means, including all competent national tribunals, which

have legislative affairs for protecting the rights of women on an equal basis with men; Article 15 means that women are as capable as men in legal proceedings (Rashid & Rashid, 2022). The General Recommendation No.19 (1994) of the CEDAW Committee on violence against women and the Concluding Observations of the 1994 5th periodic report of Pakistan under CEDAW pointed out that there is an overall disparity in the implementation of the policies and programs of equality across provinces in Pakistan (Cheema, Munir, & Khan, 2020). The Committee's good fortune was to have engaged Pakistani delegation on the ground to dialogue the country's actual progress achieved thus far, such as ensuring specialized judicial chambers for violence against women, higher the participation of women in elections registered as voters, and the legislative strides taken in 2016 which now form the content of this article, but requested clarifications on how these took place in non-uniform manner within the country, specifically, the attempt to establish specialized judicial avenues for women groundless in law, for violence against women, as well as increase in women's electoral registration as voters' without any uniform pattern in the country, exactly what this article empirically showed in the Section 4 (Amir et al., 2023).

The key lesson for Pakistan from this comparative and international review is not that one institutional model can be imported 'as is', but that the mechanisms that have been found to have measurably made a difference in other countries co-located, trauma-informed victim services, real, rather than nominal, specialized (rather than victim) courts, judicial and prosecutorial training that is based on an evidence-based understanding of trauma responses and, crucially, consistent international monitoring bodies' focus on implementation and resourcing, not just on legislation are all directly relevant to the specific deficits that have been identified in Pakistan specific justice sector data (Dlamini, 2023).

CONCLUSION

This paper has analyzed the constitutional support for women's rights in Pakistan in the context of the right to a fair trial and has discussed that the issue is not the lack of constitutional or legislative commitment to women's rights, but the lack of them in practice in the form of measures which can be measured and quantified. The text of Articles 25, 9, 14 and 10A of the Constitution, coupled with the two decades of increasingly important legislation, is, in substance, at least as progressive as the rights found in international law, as embodied in the ICCPR and CEDAW. But the facts presented here show single-digit conviction rates for all gender-based violence cases across the country, an unequal representation of women in superior courts (one in twenty), and the documented failure to investigate and prosecute crimes against women. The main point of this article is thus that, going forward, it is not so much a matter of further declaratory reform, but of continuous investments in the people and institutions the police, prosecutors, courts, legal aid providers, etc.- that decide whether constitutional guarantees are seen by women as binding promises or as empty words. Where this has been done as a specialized institution (such as the dedicated gender-based violence courts in Sindh), measurable improvement has ensued, so the direction toward closing the gap is viable if the necessary resourcing, accountability, and cultural transformation that the preceding analysis identified as still far off is done.

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