

Constitutional Due Process and Federal Civil Service Disciplinary Actions in Pakistan: Interpreting the Scope of Article 10A

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Abstract

Propose of the Study: This study analyzes the Constitutional due process standards, if any, contained in Article 10A of the Constitution of Pakistan for federal civil servants, and whether such standards are distinct from and higher than the process requirements contained in the federal service regulations.

Research design and methodology: This study employs the doctrinal research methodology and analyzes the Civil Servants Act of 1973, the Civil Servants (Efficiency and Discipline) Rules 2020, the jurisprudence of the Supreme Court of Pakistan and the Constitution of the Islamic Republic of Pakistan.

Results: The study identifies a shift from a procedure based on rules to a procedure based on the Constitution. Therefore, in the field of disciplinary action, the principles of constitutionalism such as notice, the right to be heard, the right to effective defense, the right to cross-examination, the right to an impartial inquiry officer, a reasoned decision, and the right to effective judicial remedy, assume great significance.

Limitations of the research: This study intends to provide a framework of constitutional due process to disciplinary authorities and Service Tribunals in order to strike a balance between the rights of civil servants to due process and the state's need to carry out the duties of an efficient and accountable administration.

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1. Introduction

Public administration is conceived as a system to bring about order and reason in the dealings of governmental personnel with the citizens. One of the cardinal requirements of this system is the recognition of the need for disciplinary measures to counter the adverse effects of neglect, willful disobedience, and willful inefficiency on the part of government officials. Gross neglect or willful disobedience of such rules or regulations amounts to corruption or advocacy of dishonest means and practices. It is an offence which, if proven, calls for summary dismissal of the government employee. There are other forms of disciplinary measures to cope with different types of negligence or willful inefficiency, or absence without authority. Since the administration of these disciplinary measures may affect the career and the economic future of the employee, the law must strike a reasonable balance in providing these measures and protecting the employee against unfettered discretionary power of the Administration.

In Pakistan the disciplinary measures against Federal Government employees are governed by the Civil Servants Act, 1973 and the Civil Servants (Efficiency and Discipline) Rules, 2020. The Act provides that a civil servant is amenable to disciplinary rules and regulations

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and penalties. The Rules provide for the procedures and limits within which charges may be framed against a civil servant and disciplinary action taken against him/her. These rules also provide for various safeguards to a civil servant against the excesses of disciplinary authority of the Government.

While these safeguards are helpful, they do not fully respond to the concerns raised with respect to the Constitution. The Constitution (Eighteenth Amendment) Act of 2010 added Article 10A to the Constitution of the Islamic Republic of Pakistan. Article 10A applies to all persons. It provides that a person has the right to be tried fairly and to be afforded due process in any proceedings which may determine the person's civil rights and obligations or which may determine the person's criminal charge. The phrase, "the person's civil rights and obligations" is broad and may encompass procedures dealing with the person's administration and employment.

This raises an important question in public and administrative law. When the State takes disciplinary action against one of its employees and imposes a serious sanction on the employee, is it sufficient for the State to have complied with the service rules, or is it necessary for the State to have complied with the requirements of the Constitution? This raises the main issue addressed in this article.

A department may give a show-cause notice. A show-cause notice is a formal requirement. However, the department may fail to give an adequate explanation with the notice. The department may dismiss an employee based on an unstated reason provided in the show-cause notice. A department may claim that an inquiry is being conducted; however, the employee may be prevented from confronting the employees who have provided the incriminating statements against the employee. An employee may be permitted to personally present a case to the department; however, the department may have already made a preliminary decision to dismiss the employee. An employee may prepare a defense to a charge; however, the defense may not be considered by the department. A department may issue a procedure; however, the procedure may not serve the purpose of affording fairness to the employee.

The recent cases decided by the Supreme Court of Pakistan have recognized the absence of fairness in procedure despite the presence of a Departmental Inquiry. In *Usman Ghani's case*, (2022 SCMR 745) the Supreme Court of Pakistan has distinguished between a preliminary fact-finding exercise and a Departmental Inquiry. It has held that a Departmental inquiry would afford an employee an opportunity to defend himself/herself and examine the adverse witnesses against him/her. The Court has also observed that a Service Tribunal must determine whether a person charged with a disciplinary inquiry has been afforded the right to fair trial.

Related concerns are found in other cases. In *Faisal Ali v. District Police Officer, Gujrat & Another* (2025 SCMR 92), the petitioners relied on allegations that were not included in the communicated disciplinary case. The Supreme Court took notice of this and set aside the order of the lower appellate court. *Aamir Akbar v. Additional Superintendent of Police, Bahawalpur & Others* (2025 SCMR 632), also involves similar circumstances where no regular and adequate inquiry was conducted prior to the taking of disciplinary action.

Other reported judgements have further clarified and strengthened the position. In *Syed Qaiser Abbas v. Senior General Manager, Pakistan Railways* (2026 SCMR 576), the Supreme Court held that a regular departmental inquiry was a prerequisite prior to a major disciplinary action, i.e. dismissal. Likewise, in *Muhammad Ali Wassan v. Prime Minister of Pakistan & Others* (2026 SCMR 692) the Court held that the right to cross-examine was related to the constitutional rights enshrined in Article 10A.

A gradual shift is occurring from reliance on principles of natural justice to a constitutional focus on administrative action. Procedural rules have existed in administrative law and practice for some time. The innovation of the post-2012 amendments to the Constitution of Kenya was to secure the recognition of the status of certain procedures in the administration, in addition to the substantive rights guaranteed in that instrument.

This development is significant to both constitutional and public administration law. Fairness in procedures is to be encouraged, particularly in the determination of the rights of individuals. Fair procedures empower individuals to bring to the attention of decision-makers the reasons why they consider a particular decision is incorrect and/or based on erroneous or irrelevant information. Mashaw (1985) and Galligan (1997) posit that fair procedures in the administrative context are to be assessed in light of the nature of the decision to be taken and the interests affected. Fair procedures in administrative systems need not be a strict replica of judicial procedures.

It is pertinent to mention that the value embodied in the principles of fairness in judicial review is multifarious. In addition to those enunciated by Daly (2021), fairness in discipline and personnel administration is to be promoted in order to ensure that employees of the public service do not suffer arbitrary dismissal, while the public service is empowered to act against misconduct.

Similar results are reported from studies on public sector organisations in Pakistan. Quratulain et al. (2019) noted that public sector employees in Pakistan, in case of perceived unfair treatment at workplace, showed lower job satisfaction and organizational commitment. Constitutional law research has its own limitations; however, it strengthens the case for fair treatment by public organizations. An arbitrary or unreasonable system of discipline may lead to a situation where the public has no confidence in the administrative system. On the other hand, if a system becomes so legal and judicial that the process of administering discipline takes decades, the purpose of accountability also is lost. Therefore, the system should incorporate both aspects, fairness and workability.

Although there are a plethora of articles and case laws relating to the development of the doctrines of Constitutional Due Process and the Civil Service Disciplinary System in Pakistan, there are very few articles that focus on the intersection of the two. The articles that have focused on the intersection of the two mention fair treatment, natural justice, Departmental Inquiries and service tribunals as separate and distinct concepts. Recently, a couple of articles have taken the integration of Article 10A with other concepts of administrative law. Sheikh and Sohail (2026) argue that, in the context of Pakistan, the judicious application of Article

10A by the courts can enhance and give effect to the principle of fair treatment in the area of administrative law and governance.

While other articles have expanded upon this and related issues, this article particularly focuses on the Federal Civil Services of Pakistan. Three issues are addressed. The first issue is what effect, if any, does Article 10A have on the rights and liabilities of Federal Civil Servants? The second is what safeguards, if any, do the judgments of the Supreme Court offer? Third, does Article 10A, in combination with the service rules, place a higher requirement on the protection of the rights of civil servants?

It is the position of the author that the gradual acceptance and application of Article 10A by the judiciary has begun the process of constitutionalizing administrative justice in Pakistan. This article does not abrogate or modify either the Civil Servants Act of 1973, or the Civil Servants (Efficiency and Discipline) Rules of 2020. The goal of Article 10A is to protect the rights and interests of workers and to lay down a constitutional minimum to make procedures concerned with the determination of those rights and interests. Therefore, what must be considered is not whether the required procedures afforded the employee a fair opportunity to be heard, but whether the procedures fully and adequately protected the employee from an unfair determination concerning his/her rights and interests.

2. The Constitutional and Legal Foundations of Administrative Due Process

Article 10A has its origins in the Eighteenth Amendment. However, the principles that underlie Article 10A have a long history in administrative law. These principles are contained in the rules of procedural fairness and concern the right of persons to be heard and the need for an adjudicating authority to be impartial. Sometimes, lawfully empowered officials make decisions that are wholly unjust. This may occur because affected persons are unaware of the case against them or are not given the opportunity to present their case.

There are numerous variations of procedural fairness. Often, the procedures required to ensure natural justice are determined having regard to the nature of the decision to be made and the potential consequences of that decision. A decision to terminate a public sector employee would warrant greater procedural fairness than a decision to transfer that employee to another position. A decision to dismiss an employee would require greater procedural fairness than a decision to temporarily suspend an employee from work. Galligan (1997) supports this view and argues that the requirements of procedural fairness in various situations should be determined on an incremental basis, from the least to the greatest.

This is relevant to civil service matters, especially to proceedings held to consider the discipline of an employee. A departmental inquiry is not a criminal case. The objective of a departmental inquiry is to ascertain whether an employee has violated any of the provisions of the service discipline. It is not to determine whether a criminal offense has been committed. There are a number of factors which have to be taken into consideration in arriving at a decision in a case where an employee may be dismissed or his service discipline violated. One such factor is the nature of the employment.

Procedural fairness is applicable to the determination of the rights and obligations of persons. The Constitution has raised the status of procedural fairness to a level higher than that of

regular laws. Fairness, however, may not always require strict compliance to all the technical procedures. In the determination of the rights and obligations of persons, it is desirable to formulate fairness in law in such a way as to harmonize the interests of the state and the individual. The Courts may redefine the limits within which the state may act to protect the interest of the community while at the same time ensuring that the interests of the individual are not completely disregarded.

The Supreme Court covered this idea in the case of *Naveed Asghar and Others*. While that case was about the criminal proceedings, the Court mentioned that the provisions concerning the fair trial in Article 10A, are to be read as widening the scope of subordinate legislation to determine civil and/or criminal matters. The Supreme Court's view holds that in proceedings to enforce a person's legal rights, including a person's right to public employment, the provisions of ordinary laws cannot be restricted to their ordinary meaning, but must be read in the light of the provisions of the Constitution.

As a person's legal rights, including the right to employment, are affected, it would not be possible to give a restricted meaning to the provisions of ordinary laws. Public employment is sometimes termed as 'civil' employment. However, there are disciplinary proceedings, through which legal rights may be affected. For example, a public employee may be removed from service. The employee may be retired, demoted, or subject to other adverse action which may affect the employee's legal rights. Merely because such proceedings are administrative, they are not beyond the purview of the provisions of the Constitution which ensure fairness in procedures.

A broader application of this development is observed in *Muhammad Yaseen and Others v. Sindh* (2023 SCMR 1703). In this case, the appellants challenged the constitutional legality of their public appointments being revoked due to reported findings of fraud and irregularity. The Supreme Court considered that the appointing authority was required to give the appellants an opportunity to be heard before taking a decision to revoke their appointments. The Court maintained that the right to be heard is a constituent element of Article 10A and natural justice. The judgment also indicates that procedures governing administrative or non-adjudicatory actions could raise issues under Article 10A.

The main elements of the federal civil service have been codified in the Civil Servants Act of 1973. This Act lays down in detail the kind of offenses and omissions for which a civil servant can be called upon to answer before a Disciplinary authority and the penalties attaching to such offenses and omissions. Because of the wide discretionary powers of a Disciplinary authority, it is important that the procedure for exercise of such powers should be laid down in a law.

It is, however, the Civil Servants (Efficiency and Discipline) Rules, 2020, which have elaborated the framework of the law in regard to efficiency and discipline of federal civil servants. The Rules stipulate different penalties for civil servants for infractions of the Rules and state the circumstances in which an employee may be suspended from duty. The Rules state the procedures to be followed in an inquiry and stipulate the employee's right to be represented and to call witnesses and produce documents in his/her defense. It is a requirement

of the Rules that the decision maker should consider the report of the inquiry and other relevant information before arriving at a decision regarding the disciplinary action to be taken against the employee.

The Rules already incorporate several elements of procedural fairness. So, when analyzing Article 10A of the Federal Constitution, the question to ask is: what is the extra-value added by Article 10A, if the employment laws of Malaysia already incorporate all or most of the elements of the Federal Constitution?

There are three plausible answers to this question. The first answer is that Article 10A is largely redundant. From this perspective, the protection afforded by Article 10A is a restatement of protections given by the Employment Rules. The second answer is that Article 10A fills in the gaps in protections provided by the Employment Rules. The last answer is that Article 10A sets a higher standard. From this view, protections afforded by Article 10A set a higher standard of protection, and it would be open to courts and tribunals to consider whether the protections of the Employment Rules have been complied with, in spirit and substance.

The last view is most supportive of recent trends in case law. Currently, there is a shift to determining whether protections afforded by Article 10A of the Federal Constitution have been complied with, in spirit and substance. Also, courts are taking a greater interest in the quality of the evidence relied upon by the decision maker. Courts are also interested in the fairness of the procedure adopted by the decision maker, to justify the penalty.

This interpretation of the statutory rules does not diminish the importance of procedural rules. The service rules and Article 10A serve similar functions and should be read together. The service rules prescribe the procedures and Article 10A fills in the constitutional dimension. A vital aspect of fair procedure becomes unconstitutional if a rule of process is contravened. Removing a rule of process may be justified if it is a technical, inconsequential breach and does not affect the rights of the person or the decision's finality.

From the point of view of administrative law, constitutionalizing technical breaches of process does not depart from the norm. Due process is flexible and its parameters are set by the nature of the decision. An overly rigid approach to procedural fairness may result in an unwarranted failure to provide any opportunity to be heard. Galligan states that to preserve fairness, process must be geared towards allowing a person to be meaningfully participate in the decision-making process. Daly's study provides a complementary viewpoint by showing that administrative process must be fair, and in combination with good administration, safeguards procedural rigor.

This is reflected in more recent research from Pakistan. Ali and Adnan (2026) also suggest that a right to be heard has derived from a customary principle of natural justice and has been constitutionally upgraded to Article 10A. Sheikh and Sohail (2026) also take the position that the requirement of due process should determine the structure of administrative action and should not be limited to the availability of remedies against irrational action. Once again, although the emphasis is on electronic administration, the same principle would no doubt be applicable to disciplinary action.

Constitutionalization should not bring about the judicialization of ordinary administration. It would be unacceptable if Article 10A, in effect, meant that irreparable procedural defects in a decision should be challenged in a court of law. It is essential to strike an appropriate balance between procedural irregularity and procedural unfairness. The main point is whether the action of the decision-maker obstructed the employee from effectively answering the case against him, brought forward and relied upon by the decision-maker, and/or offered evidence in support of his/her case. Article 10A is intended to secure the employee the right to a fair procedure in a decision which will have an adverse effect on his/her employment.

3. Methodology

Doctrinal legal research is the primary method used in this article. Doctrinal research is most suitable for research that requires identification and interpretation of legal relationships between constitutional provisions, statutes, rules and/or case law. This research does not seek to explore the views and perceptions of civil servants. Rather it seeks to examine legal frameworks with respect to procedural fairness.

The main legal texts examined in this article are the 1973 Constitution of the Islamic Republic of Pakistan, the Civil Servants Act of 1973, the Civil Servants (Efficiency & Discipline) Rules, 2020, the Civil Servants (Appeal) Rules, 1977 and the Service Tribunals Act, 1973. The focus of this research is federal civil servants. Case laws relating to provincial civil services have been considered only if the higher court (i.e. the Supreme Court of Pakistan) has used the cases to enunciate constitutional principles of administrative and procedural fairness. In interpreting the constitution, the courts are not restricted to a particular provincial statute.

The focus of the judicial review is on decisions made after 2010, given the addition of Article 10A through the Eighteenth Amendment. More recent cases of the Supreme Court of Pakistan relate to notice, regular inquiry, the right to be heard, cross-examination, and proportionality. The cases also review the role of Service Tribunals. The cases primarily relied upon include Usman Ghani, Muhammad Yaseen, Faisal Ali, Aamir Akbar, Muhammad Nasir Ismail, Syed Qaiser Abbas, and Muhammad Ali Wassan.

Cases are reviewed thematically. The review is not to prepare case digests. The review is to evaluate if cases outline a definitive constitutional practice. This review is to assess if cases explain the relationship between different procedural protections of constitutional fairness and reframe the relationship of constitutional fairness and other protections of the law. The review of case law is supported by review of relevant literature.

4. Fair Notice, Periodic Inquiry, and Meaningful Participation

4.1 Service Related Constitutional Due Process

There are many decisions that show Service-related Constitutional Due Process is a process that has evolved with time and often with a combination of principles like notice, inquiry, participation, evidence and review. The process starts with a courtesy to the employee to let them know the nature of charges against them.

There are a number of situations where lack of adequate communication of charges leads to an unfair disciplinary process. A show-cause notice is given to an employee to answer charges against them, and gives management an opportunity to review evidence. It is also an opportunity for an employee to raise a defense.

The decision in *Faisal Ali* (2025 SCMR 92) points out that if charges communicated to an employee for disciplinary purposes are insufficient, an unfair disciplinary process is set in motion and an employee cannot be punished for that. In that case, absence from duty was the charge against the employee, and the management wanted to impose a penalty for that. The management, however, later on, relied upon other charges, and evidence which were related to the criminal proceedings against the employee. The SC of Pakistan held that it is not appropriate to rely on such other charges to impose a penalty on the employee. The case illustrates the intersection of information and defense. A person's inability to access the information pertinent to the allegation defeats the primary purpose of a hearing. Thus, there cannot be a severance of the notice from the reason (s) for the decision. While there are many nuances and differences between the charges against an employee and the case against an accused person, authorities are bound to inform employees of the charges against them and allow them an opportunity to be heard before a decision is made which is likely to affect their rights and interest adversely.

This position has been elaborately stated by the Hon'ble Supreme Court of Pakistan in the case of *Muhammad Yaseen Vs. Province of Sindh* (2023 SCMR 1703). In this case, which was a disciplinary case against an employee, the Supreme Court stated that an employee, prior to taking an adverse action against him, is entitled to notice.

However, the court has emphasized that fair procedure is a pre-requisite and notice is a procedural requirement. Employees have the right to participate in proceedings to defend themselves. Often, employees are not afforded the opportunity to meaningfully participate in a proceeding to defend themselves. The case of *Usman Ghani Vs. Chief Post Master General, Karachi and others* (2022 SCMR 745) illustrates the failure of the court to enforce fair procedure.

There are important distinctions between a preliminary inquiry and a formal inquiry. The main difference is the level of evidence that each requires. Traditionally, a preliminary inquiry is less formal and less comprehensive than a formal inquiry. Preliminary inquiries provide an opportunity for an administration to assess whether there is enough information to instigate a formal proceeding against an employee. Often, preliminary inquiries are undertaken to collect enough information to determine if formal action is warranted. A preliminary inquiry may also be used to assist in the investigation of an alleged offense by an employee; however, a determination of an employee's liability will not be made in the process.

The distinction between a preliminary inquiry and a formal inquiry will often be unclear to employees. Preliminary inquiries may serve the purpose of determining the facts and reach a finding of liability; however, a preliminary finding should not serve as a basis to reach a final finding of an employee's liability or impose an employment sanction.

The Court in *Usman Ghani* also recognized the importance of an employee being afforded the right to defend themselves during a regular inquiry. Witnesses called to testify against an employee are also affording the employee the opportunity to cross examine them. The Court went on to note that a Service Tribunal should examine if a fair process was afforded to the employee during the disciplinary proceedings.

The requirement of a legally adequate inquiry was considered in the case of *Aamir Akbar v. Additional Superintendent of Police, Bahawalpur and Others* (2025 SCMR 632). Here, the employee's case was that while he had suffered severe disciplinary action, an adequate regular departmental inquiry was not carried out and, therefore, he was denied the opportunity to present evidence and other witnesses. The Court, in this case, was of the view that these were more of substantive irregularities affecting the fairness of the inquiry as distinguished from mere procedural defects.

The Court in *Senior General Manager, Pakistan Railways v. Syed Qaiser Abbas* (2026 SCMR 576), while interpreting the principles of natural justice, also reiterated that when the case of the employee is for major/unfavorable penalty such as dismissal from service, regular departmental inquiry and an opportunity of hearing must be given. The Court further ruled that where such a regular departmental inquiry is carried out, it is binding on the authorities to come to the conclusion that there has been a lapse or dereliction of duty on the part of the employee, and only then can major/unfavorable penalty be imposed.

It may be concluded from these decisions that, while interpreting the principles of natural justice, if an employee has been denied an opportunity of being heard in a fair proceeding, the employer is bound to come to a conclusion that the employee has, in fact, committed the breach of discipline. The timing of a hearing is important. An employment hearing scheduled after the employer has made the final decision is unlikely to benefit the employee. An employee is entitled to participate at a stage of the process to provide any information that may impact the employer's decision. If an employee is found to be in the wrong during an internal process, an opportunity to be heard regarding that process will not necessarily correct the finality of that decision.

This demonstrates what is meant by the inclusion of Article 10A to the Federal Constitution. The Service Rules lay down the framework for various stages of a disciplinary process, and Article 10A does make reference to the Service Rules; but the question that Article 10A poses is, whether the framework has achieved its purpose in providing fairness and justice. A notice of charge should contain the pertinent information that is required to be defended. An employee is usually entitled to defend the charges against him/her. Fairness requires that the employee should be given a meaningful opportunity to defend the charges, and to present information and evidence to support his/her case.

4.2. Evidence and Reliability

A service-law case that has illustrated the cross-examination right under Article 10A is *Ghani v. Chief Postmaster*. The case held that the principle of fairness entitles an employee to cross-examine witnesses in a disciplinary hearing in cases where the decision against the employee relies on contested, oral evidence, given the various competing, subjective, and institutional

interests of a witness that may affect the testimony. Disciplinary decisions that rely heavily on uncontested evidence may compromise the fairness of the proceedings, and, therefore, the employee is entitled to test the evidence before it is adopted as a basis of the finding of misconduct. This case also confirms the importance of cross-examination during the disciplinary proceedings. The right recognized in cross-examination includes the overall right of the employee to substantively participate in the disciplinary process.

This principle attained significant importance from the point of view of constitutional jurisprudence in *Muhammad Ali Wassan v. Prime Minister of Pakistan and Others*, (2026) SCMR 692. In that case, most of the witnesses were examined during the departmental inquiry, however, the employee was not allowed the right of cross-examination. The Supreme Court held that it was a serious flaw, which affected the right of the employee to defend himself and the fairness of the proceedings. The Court also observed that the right of cross-examination was closely connected with the right to a fair trial envisaged under Article 10A. Thus, a mere technical defect could not be overlooked in the proceedings. It was held that the refusal to grant the right of cross-examination formed a substantial portion of the disciplinary proceedings and hence this refusal affected the disciplinary proceedings. It is relevant because we have to go beyond the technical deficiency of a service rule. If the finding of a disciplinary inquiry is based on the testimony of witnesses, against which the employee has no opportunity for cross-examination, such inquiry would become a sham inquiry in disguise.

Art. 10A does not mandate the right to oral cross-examination in every disciplinary case. A requirement of judicial formalism in departmental disciplinary proceedings would be burdensome and slow. Administrative proceedings do not require the formality of a courtroom. There are cases that do not require the presentation of oral testimony. An example would be case examined on the basis of a disciplinary charge that relies primarily on attendance records, and other factual documents, records, and other evidentiary materials. In such cases, a written explanation should suffice. The requirements of administrative law set forth in Art. 10A are not satisfied where a disciplinary court is called upon to make a determination in the absence of a challengeable record. A case examined on the basis of an attendance record or other evidentiary materials does not require the presentation of a testimony. This is especially true when witness credibility is in dispute, and a disciplinary authority is required to make a factual determination based on competing versions of facts. Considering the nature of the evidence before a disciplinary authority, Art. 10A mandates a reasonable opportunity to present evidence and a fair determination.

Impartiality is also critical to this standard. It is unrealistic for government departments to appoint completely external decision-makers in every case of internal disciplinary action. The fact that an inquiry officer is a fellow public servant does not demonstrate bias. However, convenience should not justify a biased process. The inquiry officer must make a genuine assessment of the evidence. The final decision-maker must assess both the inquiry report and the employee's defense. There is little purpose in allowing participation if the outcome has been predetermined. Daly (2021) connects impartiality to both individual fairness and good administration. It is paramount that administrative decisions are made on the basis of relevant factors as opposed to institutional or personal preferences. In disciplinary proceedings, a genuine assessment should be made, and the employee must be provided an opportunity to

influence the process. Article 10A doesn't compel government departments to set up internal courts, but it requires a process of genuine fair and independent consideration.

Connected thinking works best when dealing with multiple complex elements. A disciplinary body must provide its reasoning when finding an employee to have breached a specific standard. The statement of the finding is inadequate and may lead to a perceived lack of fairness. A disciplinary order need not be as extended as the ruling of the High Court, but it should give sufficient reasons to show what the employee was found to have done, what evidence led to that finding, and what were the main points of the employee's defence. Reasons should not be seen as a chore imposed on the disciplinary body; rather, they provide an opportunity to explain how the various components of the evidence fit together and how the components assist the disciplinary body to arrive at the finding. An employee who understands why the defence failed will also understand why the penalty imposed was justified. Reasons assist the appellate body and the Service Tribunal to determine whether the disciplinary order was just and equitable.

The case of Usman Ghani shows the importance of substantive review of departmental proceedings by the Courts. In this case, the Supreme Court was also concerned with the evaluation of evidence done by the Federal Service Tribunal. This is also important considering that under Article 212 of the Constitution, specialized tribunals have been created for service matters. In all other cases, the general jurisdiction of the Court would cease; however, in these matters, the review provided by the Service Tribunals would need to be substantive, so that they are not an administrative convenience. Thus, a Service Tribunal would need to ascertain if the disciplinary proceedings were conducted according to the service law and if the employee suffered from any serious procedural injustice. The establishment of a specialized tribunal would not detract from the importance of the constitutional rights to a fair trial; it would provide an additional assurance that a civil servant would get a fair tribunal review of his/her service matter.

Recent case law recognizes the difference between more significant procedural errors and minor defects that produce genuine unfairness to the employee. It is not sufficient to attack every irregularity to invalidate disciplinary proceedings. A meaningful constitutional system must allow for meaningful distinctions between harmless slips during routine administration of the process and mistakes or oversights that affect the outcome of the process. This could be expressed in terms of "material procedural prejudice". Have the errors of the administrative process deprived the employee of the right to respond substantively, to present evidence, to examine adverse evidence, to receive impartial consideration, or have the right to a review? In this context, the proceedings based on an allegation for which no notification was given are quite different from a minor error in the wording of an order. Likewise, not giving an employee the opportunity to confront a witness who provides key evidence is a much more serious error than a minor delay in scheduling a hearing. The reasoning of the Supreme Court in the case of **Muhammad Ali Wassan** also supports this approach, since in that case it was held that the employee was denied the right to present a case against the employee whom he was accused of assaulting and, therefore, was denied the right to challenge evidence against him.

The final element in ensuring disciplinary fairness relates to the penalty. After it is decided that misconduct has occurred, the imposing authority must determine what penalty should be applied. This is primarily an administrative decision, and courts must be careful about replacing the employer's disciplinary decision with their own preferred penalty. However, administrative discretion is not unfettered. In **Muhammad Nasir Ismail v. Government of Punjab** (2025 SCMR 708), where the major penalty of compulsory retirement was awarded for unauthorized absence, the Court held that the executive has power to manage and discipline its officers, but it added that while the laws prescribe several options for imposition of disciplinary punishment, a selection of penalty should be justified and be in proportion to the misconduct. There is a requirement of a rational relationship between misconduct and the penalty. The decision of the penalty should not be entrusted to courts to decide. However, the objective of the disciplinary system should not be defeated by lack of rational limits to the penalty.

Although comparable, procedural due process and proportionality have different meanings. Both do, however, require that administrative decisions be justified. An investigation of sufficient process may sufficiently show a breach of disciplinary norms; however, the final administrative action may be challenged as unlawful if the decision is arbitrary or unreasonable and poorly justified. The collective decisions of the courts show a progressive development. The extent of an employee's right to challenge a disciplinary decision will depend upon the role of the witness in the formation of the evidence relied upon to justify the disciplinary action; a genuine concern for the fairness of the process will require the agency to undertake an impartial investigation; a reasoned decision will assist the employee in appealing; and unfairness will arise if the decision is disproportionate. These protections were previously existing in various forms, but their intersection with an express constitutional right has strengthened procedural fairness. Article 10A codifies this right and provides a stronger constitutional basis for addressing the fairness, reasonableness, and legitimacy of administrative actions.

5. From Procedural Compliance to Constitutional Fairness

5.1. Constitutional Minimum with Article 10A

The cases discussed above illustrate the meaning of two related questions. The first question is whether the procedure laid down in service law was complied with. The second question is whether, having regard to the entire procedure, the authority in question acted fairly. In relation to civil service disciplinary matters, and the growing significance of Article 10A, the first question is comparatively easy to answer. The more difficult question is how the second limb of the test has been addressed. It is clear that the rules and procedures laid down by a department constitute a system which, if followed, may establish that certain steps had been taken. What is less certain is whether, in following those rules and procedures, an employee has in fact been afforded the right to protection of his case. If a notice is issued to an employee, does that employee constitutionally have the right to know the case against him? Is it constitutionally adequate to provide an employee the right to be heard in the presence of the case officer and challenge documents in the case officer's possession? The constitutional

question is whether, at each stage of the procedure, the employee had the opportunity to be heard and to state his case.

Constitutional fairness means focusing on the role of safeguards as opposed to their mere form. This does not mean that the Acts of 1973 and the Rules of 2020 do not play an important role. Generally speaking, adherence to the Rules of 2020 would provide evidence of fairness. That said, the judicial interpretation of a statute must be read in conjunction with the purpose for which the safeguards are included. A notice must be provided to the employee in order to apprise the employee of the case for which a decision is being taken; an inquiry must be provided to the employee to enable them to present their case against the contested facts; a hearing must be provided to the employee in order to enable them to present case against the decision. A hearing loses its purpose if it is provided to the employee after the case has been decided. This approach was also taken in the recent judgments of the Supreme Court of Pakistan in ‘Usman Ghani’ case and ‘Syed Qaiser Abbas’ case where the Court reiterated that a meaningful inquiry is essential before a decision is made.

As stated previously, the requirement to follow the principles of natural justice in service matters is not a recent development. However, Article 10A can be said to codify various elements of natural justice and to provide a constitutional minimum of administrative fairness. It is not intended to require every service departmental inquiry to follow a particular procedure. It lays down the minimum standard that would render a Departmental Inquiry administering a substantive service consequence legitimate. For these reasons, it may be said that Article 10A is neither wholly confirmatory nor wholly transformative. It is confirmatory to the extent that the principles of natural justice and the practice of administrative action in the service of Pakistan have recognized the importance of notice, hearing, and defence. It is also transformative to the extent that, by expressly incorporating these elements in a fundamental rights context, it creates an avenue for determining the legality of administrative action in the service of Pakistan. Some contemporary authors from Pakistan also support the view that Article 10A defines and limits the scope of Administrative Action in Pakistan. (Sheikh and Sohail, 2026)

While Article 10A prohibits the Bureau from overlooking all mistakes made by an employee, it does not allow for an overly broad interpretation that transforms each and every administrative error into a constitutional infraction. A system of discipline must be able to distinguish between minor irregularities and defects which result in a deprivation of a case or an opportunity to be heard or consider and challenge the evidence relied upon. It is a defect of this nature which determines the constitutional impact of the irregularity. It is also a defect of this nature which requires the Court to interfere and issue a writ of Habeas Corpus.

5.2 Proposed Due-Process Framework and Administrative Implications

The adjudication process provides numerous safeguards to ensure fairness. The protections identified in the legislative and the judicial provisions must be incorporated in the disciplinary proceedings in order to satisfy the requirements of fair process. ‘Fair process’ means the employee must be given an opportunity to defend himself/herself against the charges framed against him/her. The opportunity must be afforded at a stage which ensures that no evidence

is recorded against the employee. The opportunity must further extend to the employee to adduce evidence and examine the evidence of the adverse party. Such protections must be ensured in the disciplinary process in order to satisfy the requirements of Article 10A of the Constitution of Pakistan. The requirements have been elaborated in the decisions reported in ‘Muhammad Yaseen’ (2023 SCMR 1703) ‘Faisal Ali’ (2025 SCMR 92), ‘Usman Ghani’ (2022 SCMR 745), and ‘Muhammad Ali Wassan’ (2026 SCMR 692). In the case of ‘Usman Ghani’, the court held that the regular inquiry must be ensured and the employee must be afforded an opportunity to examine the adverse party and adverse evidence.

The Framework should mandate unbiased and reasoning based decisions. Decision-makers, for the most part, will not be adjudicating personnel, but they must examine disciplinary matters for improper bias and predetermination and consider defenses. Final orders must be issued and must state the primary charge, the evidence that supported the charge, and the primary defense. Additionally, the orders must state the rationale that supports the determination and the reason that the defense was unsuccessful.

Reasoned decisions provide transparency and assist the Departmental Appeals process and the Service Tribunal by articulating the rationale for the decisions, thereby enabling a more informed review. In the Tribunal and Court proceedings, irregularities in a disciplinary process will be remedied, particularly where there has been an error in law.

For disciplinary authorities, the impact of the Framework is to clarify best practices and articulate what is required to remedy appeals and undue process. In determining significant matters, disciplinary authorities are reminded of the need for a formal inquiry prior to the imposition of a significant penalty. ‘Syed Qaiser Abbas’ (2026 SCMR 576) reinforced the importance of undertaking a valid formal inquiry prior to imposing a major penalty.

The choice of penalty requires an independent assessment of administrative judgment. The factual determination of an employee’s misconduct does not necessitate the employee’s immediate removal from service or the imposition of the most draconian penalty available. When assessing what penalty should be imposed, the decision-maker must evaluate the gravity of the misconduct, the extent of available legal and legitimate means to discipline the employee, the employee’s service records, and the need to uphold the discipline and orderliness of the service.

The decision of the Supreme Court in Muhammad Nasir Ismail’s case (2025 SCMR 708) is authority for the proposition that when a public servant is found to have committed misconduct and there exist a number of penalties that may be imposed, then the executive authority must ensure that the public servant is not subjected to a punishment that is out of proportion to the misconduct committed. The Court held that, in determining an appropriate punishment, the public authority must consider a range of less restrictive options, and if a less restrictive option exists, then that option must be imposed unless there are adequate justification to support the exercise of discretion to impose a more restrictive penalty. Constitutional fairness requires that, in addition to the fairness of the procedure adopted to impose a disciplinary penalty, the outcome must also be reviewed to determine its rationality.

The impact of applying this interpretation of constitutional fairness will also be of practical value to Service Tribunals. Instead of relying on the nebulousness of the principle of natural justice, Service Tribunals may wish to consider whether the employee had the opportunity to be heard when the case was determined, whether the employee was provided with the case material, whether the employee was permitted to present a defense, whether the employee was permitted to challenge or rebut adverse case material, and whether the case was decided by an impartial case evaluator. This would assist in distinguishing between a case where a Service Tribunal concludes that an employee has not been afforded a fair process and a case where the Service Tribunal fundamentally disagrees with the outcome of an administrative decision. This would ensure that service employees are not deprived of the right to a fair and reasonable opportunity to challenge the administrative decision and the process. Finally, service employees are not exempt from the control and supervision of the law.

6. Conclusion

This study has reviewed the extent to which Article 10A of the Constitution sets out separate constitutional equivalents for the federal civil service of Pakistan for the purposes of disciplinary proceedings. It has shown that Article 10A has afforded greater depth and range to the interpretation of service law.

The Civil Servants (Discipline and Efficiency) 2020 Rules provide the framework for taking federal civil services disciplinary action. Case law has shown that the Rules and the Civil Servants Act 1973 must be supplemented to give effect to the requirement of fairness and due process. The jurisprudence has been consistent and has set standards for the requirements of fairness and due process. Justice Muhammad Yaseen has held that rights to administrative hearings are implicit in Article 10A. In a separate case, it has been held that an employee has the right to cross examine the witnesses against him. It has been held that the requirement of Article 10A has not been fulfilled if an employee has not been granted an opportunity to defend himself against the allegations made against him. It has further been held that the denial of cross examination to a public servant is a clear case of violation of Article 10A. In another case it has been held that the right to fairness in the process requires that the disciplinary action must not be excessive.

The main point is that while related, procedural and substantive components of the right to a fair hearing differ. When investigating the fairness of a disciplinary procedure, the absence of crucial elements, like the employee's knowledge of the charges, the employee's opportunity to answer the charges, the opportunity to challenge evidence, and/or impartial consideration, should be analyzed, in addition to the presence of required stages of the process in the administrative record.

The assessment of these elements is made possible by the six elements of this article. This article does not require departmental investigations to resemble criminal trials. This article retains the state's interest to enforce disciplinary measures on its employees. This article, however, gives the state's disciplinary power a constitutional minimal standard. Therefore, Article 10A is to be regarded as stipulating both the protection of the individual and the improvement of state administration. The combination of these two aspects of Article 10A

ensures the civil service of a state is disciplined and properly administered. As the case law interpreting Article 10A continues to evolve, it is a step in the right direction to establish a framework of state public administration where state employees are disciplined by the state within limits of the constitution.

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