

Criminal Liability and Procedural Fairness in Pakistan: Examining the Relationship between Substantive Criminal Law and Criminal Judicial Procedures

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Abstract

Criminal liability is legitimate only when the State proves the elements of an offence through procedures that respect legality, liberty, evidentiary reliability and the constitutional right to a fair trial. This article examines the relationship between substantive criminal law and criminal judicial procedure in Pakistan through the Pakistan Penal Code 1860 (PPC), Code of Criminal Procedure 1898 (CrPC), Qanun-e-Shahadat Order 1984 (QSO), Constitution of the Islamic Republic of Pakistan 1973, and the Torture and Custodial Death (Prevention and Punishment) Act 2022. Using doctrinal legal analysis, it argues that procedural fairness is not external to substantive criminal liability. The PPC identifies prohibited conduct, fault requirements, participation rules, defences and punishments; investigation, evidence and procedure determine whether those requirements can lawfully and reliably be attributed to an individual. Article 10A constitutionalizes this relationship by guaranteeing fair trial and due process in the determination of criminal charges. The article integrates Pakistani case law on reasonable doubt, presumption of innocence, identification evidence, defective investigation, bail, trial delay, confessions, forensic proof and appellate scrutiny. It further compares Article 10A with Article 14 of the International Covenant on Civil and Political Rights and considers the prohibition of torture as both a human-rights safeguard and an evidentiary safeguard. The article concludes that effective crime control and procedural fairness are not opposing objectives: professional investigation and reliable evidence strengthen legitimate convictions while protecting against wrongful punishment.

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1. Introduction

Pakistan's criminal justice system operates through an unavoidable relationship between substantive rules and procedural institutions. The PPC defines offences and the conditions under which conduct becomes punishable, but those rules do not establish guilt by themselves. A criminal allegation must pass through investigation, arrest where legally justified, collection and testing of evidence, charging, trial, adjudication and, where invoked, appellate review.[1][2] The central problem of criminal justice is therefore not simply what conduct the

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law prohibits, but when the State is justified in attributing that prohibited conduct to a particular person.

This question has constitutional importance. Article 9 protects life and liberty except in accordance with law; Article 10 regulates arrest and detention; Article 10A guarantees fair trial and due process in the determination of a criminal charge; and Article 14 protects human dignity.[3] The Supreme Court has treated Article 10A as an enforceable fundamental right that informs sub-constitutional legislation dealing with criminal charges.[4] In this framework, procedural safeguards are not technical obstacles standing outside criminal liability. They are part of the legal conditions under which a finding of guilt becomes constitutionally legitimate.

The article advances a liability-centred account of Pakistani criminal procedure. Its organising proposition is: substantive offence → investigation → admissible and reliable evidence → procedural safeguards → proof beyond reasonable doubt → finding of liability → lawful punishment. A failure at a materially important stage can prevent the substantive offence from being proved even where suspicion remains strong. This approach brings Criminal Law, Criminal Procedure, Constitutional Law, Criminal Justice and Human Rights Law into a single analytical framework.

2. Research Questions, Method and Scope

The study addresses three related questions. First, how do Pakistan's substantive rules of criminal responsibility interact with investigation, evidence and trial procedure? Second, how has Article 10A altered the legal significance of procedural fairness in criminal adjudication? Third, which institutional reforms would improve the reliability of liability determinations without weakening legitimate crime control?

The research is doctrinal and analytical. Primary sources include the Constitution, PPC, CrPC, QSO, the Torture and Custodial Death (Prevention and Punishment) Act 2022, and reported judgments of the Supreme Court and selected High Courts. Article 14 of the ICCPR and the Convention against Torture are used as international human-rights benchmarks.[5][6] Recent Pakistani scholarship on fair trial, police investigation, bail, forensic evidence, proof and criminal-trial delay is used to identify implementation problems and the scholarly gap.[7]–[15] The paper does not attempt an empirical measurement of conviction rates or institutional performance; its contribution is doctrinal integration.

3. Literature Review and Research Gap

Pakistani scholarship has developed several important but largely separate strands. One strand examines the constitutional content of Article 10A and the requirements of a fair criminal trial.[7][8][9] A second focuses on weaknesses in police investigation and their effects on prosecution and trial outcomes.[10][11] A third examines delay, case management and institutional coordination in the criminal justice system.[12] Other studies address bail and pre-trial liberty,[13] the mechanisms of proof under the QSO,[14] and the growing role of forensic evidence.[15]

These contributions identify important procedural defects, but the literature commonly treats them as separate topics: fair trial as constitutional doctrine, investigation as police administration, bail as liberty doctrine, and evidence as a distinct technical field. The present article connects them through the concept of criminal liability. The research gap is therefore not the absence of scholarship on procedural fairness; it is the need for a unified account of how procedural reliability determines whether the elements of substantive criminal responsibility can legitimately be found against an accused.

This framing also clarifies why defective investigation, coercive interrogation, unreliable identification, broken forensic chains and excessive delay are not merely administrative weaknesses. Each can alter the evidentiary basis upon which a court decides whether the *actus reus*, *mens rea*, participation or other elements of an offence have been established.

4. The Substantive Architecture of Criminal Liability

4.1 Act, fault and attribution under the PPC

The PPC contains the substantive architecture of criminal responsibility. Section 34 addresses acts done by several persons in furtherance of common intention; sections 107–109 regulate abetment and its punishment; section 511 addresses attempts where no express provision otherwise applies; and Chapter IV contains general exceptions relevant to mistake, accident, necessity, infancy, unsoundness of mind, consent and private defence.[1] These provisions demonstrate that criminal liability depends on legally defined conditions of attribution, not merely on the occurrence of harm.

The procedural implication is immediate. If liability is alleged through common intention, the prosecution must produce evidence from which participation and the required common intention may lawfully be inferred. If abetment is charged, the evidence must correspond to one of the statutory modes of abetment. The Supreme Court's decision in *Mst. Hajira Bibi alias Seema v. Abdul Qaseem* illustrates this connection: where the prosecution failed to establish the ingredients of abetment under section 107 PPC, substantive liability could not be sustained merely because the accused was associated with the surrounding events.[16]

4.2 Mens rea and inferential proof

Intention and knowledge are frequently proved by inference from conduct, surrounding circumstances, weapon use, nature and location of injuries, prior conduct or other admissible facts. Because mental elements are often inferential, procedural rules governing relevancy, witness credibility, expert evidence and circumstantial proof become part of the practical definition of liability. A court must distinguish a reasonable inference from speculation. The criminal standard of proof performs that filtering function.

5. Criminal Procedure: From Allegation to Adjudicated Liability

The CrPC converts an allegation into a judicially examinable case. Section 154 governs information relating to cognizable offences; Chapter XIV regulates investigation; section 167 regulates detention where investigation cannot be completed within twenty-four hours; section 173 concerns the police report; sections 496–498 regulate bail; and the trial provisions govern

charge, evidence, examination of the accused, judgment and appellate review.[2] These provisions allocate power while also limiting it.

The relationship between the PPC and CrPC can be stated simply: the PPC supplies the legal proposition that must be proved; the CrPC supplies the institutional route through which proof is collected and tested. The investigating officer does not determine guilt. The Supreme Court has expressly held that an investigating officer's opinion on guilt or innocence is not a relevant expert fact under Article 59 QSO and that determination of guilt is a judicial function.[17] This separation is essential to procedural fairness because police suspicion cannot substitute for adjudication.

6. Article 10A and the Constitutionalization of Criminal Procedure

Article 10A transformed fair trial and due process into an express fundamental right. In the Supreme Court's 2024 military-trial litigation, the Court emphasized that fundamental rights cannot be taken away by ordinary law and described Article 10A as integral to legislative instruments dealing with criminal charges.[4] The significance of this reasoning extends beyond the particular institutional setting of that case. It requires criminal statutes and procedures to be interpreted consistently with constitutionally protected fairness.

The constitutional structure is cumulative. Article 9 protects liberty; Article 10 supplies arrest and detention safeguards; Article 10A governs fair trial and due process; and Article 14 protects dignity.[3] Together they regulate the movement of an individual through the criminal process—from first coercive contact with the State to final adjudication. The stronger doctrinal view is therefore that Article 10A does not begin only when evidence is recorded at trial. Pre-trial procedures capable of affecting the fairness of the eventual determination must also be evaluated through due-process principles.

The constitutional limits on coercive power also apply before trial. In Supreme Court litigation concerning arrest and detention, the Court connected arrest without incriminating material with the rights to liberty, dignity and fair trial, and described the presumption of innocence as resting on those constitutional guarantees.[49] This reasoning is important for the present thesis because it prevents arrest from functioning as an informal declaration of guilt. The State may investigate, but coercive restrictions must remain connected to legally relevant material and judicially reviewable reasons.

7. Presumption of Innocence, Burden of Proof and Benefit of Doubt

The presumption of innocence is the procedural starting point for substantive liability. The prosecution bears the burden of proving guilt beyond reasonable doubt, while an acquittal further strengthens the presumption of innocence. *Tariq Pervez v. The State* established the enduring proposition that a reasonable circumstance creating doubt must operate in favour of the accused.[18] *Muhammad Mansha v. The State* reiterated that benefit of doubt is a right rather than a concession and treated material improvements in testimony as capable of undermining the prosecution case.[19]

Recent Supreme Court jurisprudence continues the same approach. In *Maqsood Alam v. The State*, reported as 2024 SCMR 156, the Court emphasized that conviction must rest on

trustworthy and reliable evidence and that the prosecution retains the burden of proof beyond reasonable doubt.[20] In *Muhammad Riaz v. Khurram Shehzad*, reported as 2024 SCMR 51, the Court explained the higher criminal standard, the evidentiary consequences of contradictions, and the reinforced presumption attached to acquittal.[21] *Muhammad Akhtar v. The State*, reported as 2025 SCMR 45, demonstrates how failure to send recovered firearms for forensic examination, combined with contradictions and dishonest improvements, can create reasonable doubt.[22]

These cases demonstrate the paper's central thesis. Benefit of doubt is not an external humanitarian exception to substantive liability. It is a rule determining whether the factual prerequisites of liability have been proved with sufficient certainty.

8. Identification Evidence and the Reliability of Attribution

Identification evidence directly connects a substantive offence to the alleged perpetrator. Where the offender was previously unknown to a witness, procedural safeguards surrounding identification become crucial. The Supreme Court's reported guidance on test identification parades explains that identification at a parade is not substantive evidence by itself and consolidates safeguards intended to reduce mistaken attribution.[23] Later jurisprudence has likewise treated delayed or procedurally weak identification as having diminished evidentiary value.[21]

The substantive-procedural connection is particularly clear here. The PPC may define murder, robbery or another offence with precision, but no person can legitimately be convicted unless the prosecution reliably proves that the accused was the person who committed or participated in it. Identification procedure therefore protects the accuracy of substantive attribution.

The Supreme Court's identification-parade directions require the magistrate to record objections, mistaken identifications, the witness's stated connection with the identified person, the precautions adopted and a formal certificate concerning the fairness of the exercise.[23] These details illustrate why procedural form matters: a carefully documented parade supplies information by which the trial court can evaluate the reliability of later identification, whereas an undocumented or suggestive procedure can magnify the risk of mistaken attribution.

9. Qanun-e-Shahadat, Confessions and Forensic Proof

9.1 Proof and admissibility

The QSO governs relevancy, admissibility and proof in judicial proceedings.[24] Its provisions concerning admissions and confessions, expert opinion, documentary evidence, presumptions and evidence made available through modern devices shape the evidentiary pathway to criminal liability. Article 59 concerns expert opinion, while Article 164 permits the Court, in appropriate circumstances, to allow evidence made available through modern devices or techniques.[24]

Recent scholarship emphasizes that proof under the QSO is broader than witness testimony alone and includes legally recognized mechanisms such as presumptions, judicial notice and formal admissions.[14] For criminal liability, however, admissibility is only the beginning.

Courts must still evaluate reliability, probative value, chain of custody and the relationship between a piece of evidence and the elements of the charged offence.

9.2 Confessions, torture and custodial reliability

Confessional evidence creates a special risk because an apparent admission may be produced by coercion. The QSO's treatment of confessions must therefore be read alongside constitutional dignity and the Torture and Custodial Death (Prevention and Punishment) Act 2022.[3][25] The 2022 Act criminalizes torture by public officials and addresses information or confessions obtained through torture. The prohibition has a dual justification: torture violates human dignity and can generate unreliable evidence.

The Convention against Torture reinforces this approach at the international level.[6] A criminal process that relies on coercive interrogation does not merely mistreat the suspect; it damages the accuracy of liability determination. Effective implementation of the 2022 Act is consequently part of evidentiary reform as well as human-rights compliance.

9.3 Forensic and electronic evidence

Forensic evidence can reduce dependence on contested oral testimony, but only if collection, preservation, testing and presentation are reliable. Pakistani scholarship has identified continuing implementation problems concerning forensic infrastructure, professional training and evidentiary procedures.[15] The recent Muhammad Akhtar decision illustrates the doctrinal consequence of a missed forensic opportunity: recovered firearms that were not sent for forensic analysis weakened the prosecution case.[22]

Articles 59 and 164 QSO provide important legal gateways for expert and technologically generated evidence.[24] Yet scientific evidence should not be treated as automatically conclusive. Chain of custody, laboratory competence, methodology and the connection between the scientific result and the charged offence remain matters for judicial evaluation.

10. Arrest, Remand and Bail

Arrest and remand impose coercive consequences before guilt has been adjudicated. Article 9, Article 10 and the CrPC therefore require liberty restrictions to remain legally justified.[2][3] Section 167 CrPC places investigative detention under judicial supervision when investigation cannot be completed within twenty-four hours.[2] The magistrate's role should be substantive rather than mechanical: custody should be supported by recorded reasons and assessed against investigative necessity and legal safeguards.

Bail performs a related constitutional function. Sections 496–498 CrPC regulate bail, including bail in bailable and non-bailable offences.[2] Recent Supreme Court jurisprudence on statutory bail stresses that the prosecution cannot prolong incarceration by allowing the trial to remain unfinished beyond statutory periods where the statutory conditions are met.[26] Pakistani scholarship likewise treats bail as an important intersection between personal liberty, preparation of the defence and the interests of criminal justice.[13]

The Supreme Court has also drawn a clear line between the evidentiary assessment appropriate at bail and the determination required at trial. At bail stage, the court makes a tentative assessment of the material collected for and against the accused; it does not conduct a

preliminary trial or undertake the deeper appreciation reserved for final adjudication.[50] This distinction protects both interests at stake: the prosecution retains the ability to investigate and prosecute, while an interlocutory liberty decision is not converted into a premature finding of substantive guilt.

Pre-trial detention must not become punishment before conviction. An accused held for a prolonged period may face practical disadvantages in consulting counsel, gathering defence material and maintaining family or employment ties. The presumption of innocence therefore has institutional consequences, not merely rhetorical value.

11. Trial Delay as a Fair-Trial and Liability Problem

Delay is often described as an efficiency problem, but its legal consequences are deeper. In a Supreme Court bail decision concerning prolonged pre-trial detention, the Court stated that delay in conclusion of a criminal trial is antithetical to fair trial and due process under Article 10A and connected prolonged detention with the presumption of innocence.[27] Delay can also alter evidentiary quality: memories weaken, witnesses disappear, physical evidence deteriorates and accused persons may remain under severe restrictions for years.

Recent Pakistani research similarly identifies police delay, prosecution coordination problems, judicial workload, adjournments and institutional practices as contributors to delayed criminal trials.[12] The proper response is not to lower evidentiary or defence safeguards in the name of speed. Case management, disclosure, witness scheduling and institutional coordination should reduce avoidable delay while preserving meaningful adversarial testing.

12. Right to Counsel and Equality of Arms

Article 10 recognizes safeguards concerning arrest and legal representation, while Article 10A requires a fair opportunity to answer a criminal charge.[3] Effective representation is particularly important where the prosecution relies on technical forensic evidence, complex electronic records or serious offences carrying severe punishment. Formal availability of counsel is insufficient if representation begins too late to challenge detention, preserve defence evidence or scrutinize investigative irregularities.

Equality of arms does not mean identical resources for prosecution and defence. It means that the accused must have a genuine procedural opportunity to know, test and answer the case that may result in punishment. Early and competent legal assistance therefore improves both rights protection and the reliability of adjudication.

13. Crime Control and Due Process: A False Opposition

Criminal justice must protect victims and society, investigate offences effectively and punish offenders whose guilt is lawfully proved. These objectives can create pressure for rapid arrest, detention and conviction. A due-process model, by contrast, emphasizes accuracy, legality, defence rights and control of coercive power. The two models are often presented as competing priorities.

In the Pakistani context, that opposition is overstated. Weak investigation, coercive confessions, unreliable identification and poor forensic practice do not produce stronger crime control; they produce vulnerable prosecutions and increase the risk that actual offenders remain unidentified while innocent persons are prosecuted. Procedural safeguards can therefore improve crime control by forcing investigative institutions to produce evidence capable of surviving rigorous judicial scrutiny.

The relevant balance is not between 'rights' and 'security' in the abstract. It is between reliable, lawful enforcement and shortcuts that may produce immediate coercive results but weaken the legitimacy and accuracy of criminal adjudication.

14. Case-Law Synthesis

Case	Legal issue	Principle	Substantive/procedural connection
Tariq Pervez v. State, 1995 SCMR 1345	Benefit of doubt	A reasonable doubt operates in favour of the accused.	Prevents substantive liability where proof does not reach the criminal standard.
Ayub Masih v. State, PLD 2002 SC 1048	Reasonable doubt	Conviction requires reliable proof; doubt protects the accused.	Links evidentiary certainty with legitimacy of punishment.
Muhammad Akram v. State, 2009 SCMR 230	Benefit of doubt	A single reasonable circumstance may justify acquittal.	Makes proof quality a condition of liability.
Mst. Asia Bibi v. State, PLD 2019 SC 64	Witness reliability / doubt	Material contradictions and unreliable evidence cannot sustain conviction.	Shows that seriousness of accusation cannot replace proof.
Muhammad Mansha v. State, 2018 SCMR 772	Witness improvements	Benefit of doubt is a right, not a concession.	Protects against liability founded on improved or doubtful testimony.
Identification-parade guidance, CrI.M.A. 183/2019	Identification evidence	Test identification is not substantive evidence; procedural safeguards matter.	Reduces mistaken attribution of the substantive offence.

Case	Legal issue	Principle	Substantive/procedural connection
Naveed Asghar v. State, PLD 2021 SC 600	Fair trial / appellate scrutiny	Article 10A informs criminal adjudication and rigorous scrutiny.	Constitutional fairness conditions the validity of conviction.
Mst. Hajira Bibi alias Seema v. Abdul Qaseem, 2023 SCMR 870	Abetment	Ingredients of section 107 PPC must be proved by reliable evidence.	Directly connects statutory ingredients with evidentiary burden.
Maqsood Alam v. State, 2024 SCMR 156	Contradictions / doubt	Prosecution bears the burden beyond reasonable doubt.	Prevents guilt from being inferred from a weakened evidentiary record.
Muhammad Riaz v. Khurram Shehzad, 2024 SCMR 51	Presumption / identification	Criminal proof is higher than civil proof; acquittal strengthens innocence.	Connects standard of proof and identification reliability to liability.
Muhammad Akhtar v. State, 2025 SCMR 45	Forensics / contradictions	Unexamined firearms and contradictory testimony contributed to reasonable doubt.	Shows how investigative omissions can defeat substantive attribution.
Const. Petitions 24/2023 etc. (Supreme Court, 2024 reasons)	Article 10A	Fundamental fair-trial rights cannot be displaced by ordinary law.	Makes constitutional procedure integral to criminal adjudication.
C.P. 1809/2020 (Supreme Court)	Trial delay / bail	Unreasonable delay is contrary to Article 10A and prolonged detention implicates innocence.	Links pre-trial liberty and timely procedure to legitimate adjudication.

15. Human-Rights Framework: Article 10A, ICCPR and CAT

Article 14 ICCPR protects equality before courts, a fair and public hearing by a competent, independent and impartial tribunal, the presumption of innocence and minimum guarantees

for persons facing criminal charges.[5] These protections substantially overlap with the values embodied in Articles 9, 10 and 10A of Pakistan's Constitution. The international framework is useful not because it replaces domestic law, but because it clarifies the minimum institutional features associated with fair criminal adjudication.

The Convention against Torture adds a more specific dimension to custodial justice.[6] Pakistan's 2022 anti-torture legislation translates that concern into domestic criminal law.[25] Read together, the Constitution, ICCPR and CAT support an integrated proposition: the State may investigate and prosecute crime, but the means by which it obtains and proves evidence must respect dignity, voluntariness, judicial independence and the presumption of innocence.

16. Reform Agenda

Reasoned remand orders: Magistrates should record the factual and legal reasons supporting police or judicial custody, including why less restrictive measures are inadequate. This would give practical content to Articles 9, 10 and 10A and section 167 CrPC.

Early access to counsel: Legal assistance should become practically available at the earliest consequential stage of custody, especially before interrogation and remand proceedings in serious cases.

Audiovisual recording of interrogation: Where feasible, custodial questioning and legally relevant confession-related procedures should be recorded. This can deter coercion, protect investigators against false allegations and improve judicial assessment of voluntariness.

Forensic chain-of-custody protocols: Police, prosecutors and laboratories should use standardized documentation for seizure, sealing, transfer, testing and storage. Missing forensic examination should be treated as an investigative performance issue requiring institutional review.

Prosecution screening before trial: Prosecutors should assess whether the available material actually proves the statutory ingredients of the proposed charge before committing public resources to a full trial.

Identification safeguards: The Supreme Court's identification-parade guidance should be embedded in police and magistrate training and compliance monitoring.

Implementation of the 2022 anti-torture law: Complaint mechanisms, independent investigation, medical documentation and prosecutorial follow-through should make the statutory prohibition operational rather than symbolic.

Case-flow management: Courts should reduce avoidable adjournments, use realistic witness schedules and coordinate forensic and prosecution attendance while preserving adequate defence preparation.

Strengthened legal aid: Serious criminal cases require competent defence representation capable of challenging forensic, electronic and identification evidence.

Reasoned element-by-element judgments: Trial judgments should expressly connect each material element of the offence to the evidence relied upon and explain why defence objections do or do not create reasonable doubt.

17. Discussion

The doctrinal materials support a stronger conclusion than the proposition that 'procedure should be fair.' In Pakistan, procedure performs a constitutive role in criminal liability. The substantive offence supplies the legal elements; procedural and evidentiary law determine whether the State has established those elements against the accused in a manner that the Constitution permits. Article 10A gives this relationship constitutional force.

This perspective also explains why apparently technical failures can become decisive. A defective identification parade affects attribution; an untested weapon affects the evidentiary link to the offence; coercive interrogation affects voluntariness and reliability; prolonged detention affects liberty before guilt; and trial delay can weaken the evidence through which guilt is ultimately determined. These are not disconnected procedural complaints. They are different ways in which the process can distort the determination of substantive responsibility.

At the same time, the doctrine does not require procedural perfection. Criminal adjudication inevitably involves human institutions and evidentiary uncertainty. The relevant question is whether deficiencies create a reasonable doubt, violate a constitutional guarantee or materially compromise the accused's ability to answer the charge. This allows courts to protect fairness without turning every irregularity into automatic acquittal.

A remaining doctrinal tension should nevertheless be acknowledged. Pakistani criminal jurisprudence strongly protects reasonable doubt and liberty, yet the system also permits significant pre-trial coercion and relies heavily on investigative practices whose quality varies across institutions. The law therefore contains both rights-protective doctrine and enforcement-oriented discretion. The better reconciliation is not to weaken either side categorically, but to insist that discretion over arrest, remand, bail and evidentiary collection be exercised through recorded reasons, reviewable standards and reliable material. That approach gives operational meaning to Article 10A while preserving the State's legitimate capacity to prosecute crime.

18. Conclusion

The relationship between substantive criminal law and criminal procedure in Pakistan is best understood as one of constitutional interdependence. The PPC determines what must be proved before conduct is punishable; the CrPC structures investigation and adjudication; the QSO governs the legal mechanisms of proof; and Articles 9, 10, 10A and 14 constrain the State's use of coercive power. Pakistani Supreme Court jurisprudence on reasonable doubt, identification, evidentiary reliability, delay and fair trial confirms that punishment cannot legitimately rest on accusation, investigative opinion or evidentiary suspicion alone.

The article's doctrinal contribution is that procedural fairness is not external to criminal liability. It is one of the conditions that makes a finding of criminal liability constitutionally legitimate. This proposition reconciles due process with effective crime control: stronger investigation, scientific evidence, lawful interrogation, competent prosecution, effective defence and timely trials increase the likelihood that the guilty are convicted on reliable evidence while reducing the risk of punishing the innocent.

The same approach is visible in High Court adjudication. The Sindh High Court, applying Naveed Asghar, has stressed that even a grave allegation cannot displace Article 10A and that courts must assess the probative value of each item of evidence systematically rather than allowing conjecture or probability to substitute for proof.[51] This application is useful because it shows Article 10A operating in ordinary criminal adjudication rather than only at the level of abstract constitutional review.

Pakistan therefore does not need to choose between effective criminal enforcement and fair procedure. The more sustainable reform path is to make the institutions that produce criminal proof capable of meeting the standards that the Constitution and criminal law already demand.

References

- [1] Pakistan Penal Code, 1860 (Act XLV of 1860).
- [2] Code of Criminal Procedure, 1898 (Act V of 1898).
- [3] Constitution of the Islamic Republic of Pakistan, 1973, arts. 9, 10, 10A and 14.
- [4] Supreme Court of Pakistan, Constitution Petitions Nos. 24 of 2023 etc., reasons/judgments concerning Article 10A and trial of civilians by military courts (2024).
- [5] International Covenant on Civil and Political Rights, 1966, art. 14.
- [6] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.
- [7] Majeed, N., Khan, A.N. & Asif, A. (2022). The Requirements of a Fair Trial in International and Pakistani Legal Framework: A Critical Analysis. *Pakistan Languages and Humanities Review*, 6(1).
- [8] Mehmood, K., Sultan, M.S. & Azeem, H.M. (2024). An Analysis of Pre-Trial Fair Trial Rights and International Standards. *Annals of Human and Social Sciences*, 5(II-S).
- [9] Saleem, M.M. (2025). Right to Fair Trial under Article 10A: Practical Implementation in the Criminal Justice System of Pakistan. *ACADEMIA International Journal for Social Sciences*, 4(2), 2491–2500.
- [10] Jamshed, J., Javed, M.W., Bukhari, S.W.R. & Gillani, A.S. (2020). Role of Police Investigation in the Criminal Justice System of Pakistan. *International Journal of Management Research and Emerging Sciences*, 10(2).
- [11] Khurram, B., Abida, M., Waqas, F.M. & Ansar, A. (2023). The Role and Practices of the Criminal Investigation in the Context of the Criminal Justice System of Pakistan. *Journal of Policy Research*.
- [12] Waqar, M., Iqbal, A. & Abbas Kazmi, S.S. (2022). Criminal Justice System and its Impacts on Criminal Trial Law, Practice and Procedure in Pakistan: An Analytical Study. *Pakistan Languages and Humanities Review*, 6(3), 289–297.
- [13] Razzaq, M.U., Sial, A.A.A. & Raza, M.M. (2023). An Analysis of the Legal Framework and Common Practices Governing Law of Bail in Pakistan. *Pakistan Journal of Criminal Justice*, 3(1), 1–7.

-
- [14] Majeed, N., Hilal, A. & Rashed, R.M.U. (2022). Proving Facts in Judicial Proceedings: Meanings and Mechanism of Proof in Qanoon-e-Shahadat. *Pakistan Journal of Social Research*, 4(4).
- [15] Baig, K. & Hameed, M.S. (2025). An Analysis of the Role of Forensic Evidence from the Commission of Offence to the Trial. *Pakistan Journal of Criminal Justice*, 5(1), 27–45.
- [16] Mst. Hajira Bibi alias Seema and others v. Abdul Qaseem and another, 2023 SCMR 870.
- [17] Supreme Court of Pakistan, Criminal Petition No. 742-L of 2019, judgment concerning inadmissibility of investigating officer's opinion on guilt.
- [18] Tariq Pervez v. The State, 1995 SCMR 1345.
- [19] Muhammad Mansha v. The State, 2018 SCMR 772.
- [20] Maqsood Alam v. The State, 2024 SCMR 156.
- [21] Muhammad Riaz v. Khurram Shehzad and another, 2024 SCMR 51.
- [22] Muhammad Akhtar and others v. The State, 2025 SCMR 45.
- [23] Supreme Court of Pakistan, Criminal Miscellaneous Application No. 183 of 2019 in Criminal Appeal No. 259 of 2018, order dated 22 February 2019 (test identification parade guidelines).
- [24] Qanun-e-Shahadat Order, 1984 (President's Order No. X of 1984), especially arts. 59 and 164.
- [25] Torture and Custodial Death (Prevention and Punishment) Act, 2022 (Act XXVIII of 2022).
- [26] Supreme Court jurisprudence reported as 2024 SCMR 28 concerning statutory bail and delay under section 497 CrPC.
- [27] Supreme Court of Pakistan, Civil Petition No. 1809 of 2020, judgment concerning prolonged pre-trial detention, trial delay and Article 10A.
- [28] Naveed Asghar and others v. The State, PLD 2021 SC 600.
- [29] Mst. Asia Bibi v. The State, PLD 2019 SC 64.
- [30] Ayub Masih v. The State, PLD 2002 SC 1048.
- [31] Muhammad Akram v. The State, 2009 SCMR 230.
- [32] Abdul Jabbar v. State, 2019 SCMR 129.
- [33] Tallat Ishaq v. National Accountability Bureau, PLD 2019 SC 112.
- [34] Salman Rafique v. National Accountability Bureau, PLD 2020 SC 456.
- [35] Ghulam Sikandar and another v. Mamaraz Khan and others, PLD 1985 SC 11.
- [36] The State and others v. Abdul Khaliq and others, PLD 2011 SC 554.
- [37] Muhammad Akram Rahi and others v. The State and others, 2011 SCMR 877.
- [38] Ghazanfar Ali alias Pappu and another v. The State, 2012 SCMR 215.
- [39] Rehman, T., Usmani, M.A. & Parveen, S. (2022). Police and Prosecution's Perspective on Low Conviction Rates in Pakistan. *Pakistan Journal of International Affairs*, 5(1).

-
- [40] Anwar, M.F. (2025). An overview of torture and custodial death law of 2022 in Pakistan. *Contemporary Justice Review*, 28(4), 502–512.
- [41] Iffi, I.A.K., Ansari, A.A., Maqsood, S. & Kasuri, M.R. (2024). The Role of Police in the Criminal Justice System of Pakistan: A Historical Perspective and Contemporary Analysis. *Pakistan Research Journal of Social Sciences*, 3(4).
- [42] Anjum, R., Barkat, A. & Shaikh, E. (2026). Forensic Justice in Pakistan: The Evidentiary Value, Judicial Interpretation, and Institutional Challenges of DNA Profiling in Sexual Offence Trials. *ACADEMIA International Journal for Social Sciences*, 5(2).
- [43] Constitution (Eighteenth Amendment) Act, 2010.
- [44] Police Order, 2002.
- [45] Punjab Forensic Science Agency Act, 2007.
- [46] Prevention of Electronic Crimes Act, 2016.
- [47] United Nations Human Rights Committee, General Comment No. 32: Article 14, Right to equality before courts and tribunals and to a fair trial (2007).
- [48] United Nations Office on Drugs and Crime, criminal justice and fair-trial standards materials relevant to investigation, prosecution and legal aid.
- [49] Supreme Court of Pakistan, Civil Petitions Nos. 3637 and 3638 of 2019, judgment discussing arrest, incriminating material, dignity, liberty, fair trial and presumption of innocence.
- [50] Supreme Court of Pakistan, Civil Petitions Nos. 2243-L and 2986-L of 2019, judgment explaining tentative assessment at bail stage and the balance between personal liberty and investigational interests.
- [51] Sindh High Court, criminal judgment applying *Naveed Asghar v. The State* (PLD 2021 SC 600) and Article 10A to systematic assessment of probative value and reasonable doubt.
- [52] Mehmood, K., Sultan, M.S. & Azeem, H.M. (2024). An Analysis of Pre-Trial Fair Trial Rights and International Standards. *Annals of Human and Social Sciences*, 5(2), 627-637. [https://doi.org/10.35484/ahss.2024\(5-II-S\)59](https://doi.org/10.35484/ahss.2024(5-II-S)59).
- [53] Baig, K. & Hameed, M.S. (2025). An Analysis of the Role of Forensic Evidence from the Commission of Offence to the Trial. *Pakistan Journal of Criminal Justice*, 5(1), 27-45. <https://doi.org/10.62585/pjcj.v4i2.98>.
- [54] Bakhsh, F., Mallah, M.R., Abbasi, S. & Abbasi, W.A. (2025). The Use of Forensic Evidence in Criminal Proceedings: Assessing Reliability and the Need for Reform. *ACADEMIA International Journal for Social Sciences*, 4(4), 473-482. <https://doi.org/10.63056/ACAD.004.04.0902>.
- [55] Nazir, S., Asif, M. & Khan, A.U.A. (2025). Digital Evidence in Pakistan: A Doctrinal Assessment of Admissibility and Reliability in Criminal Trials. *Advance Social Science Archive Journal*, 4(1), 1941-1951. <https://doi.org/10.55966/assaj.2025.4.1.0107>.