



## Rights of Accused in Criminal Investigation in Pakistan

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### Abstract

Rights of citizens are drafted all over the world with the ease that they can enjoy and protect the rights that have been conferred upon them by the nature itself. This research is about rights of accused in criminal investigation in Pakistan and other countries also that how these rights are infringed by the law enforcement agencies. In society like Pakistan, law enforcement agencies infringe the rights of citizens on the name of security risk. Use of third degree, illegal detention, etc. has worsened the situation. Absence of use of modern technology by law enforcement agencies of Pakistan has become the main reason for the violation of rights of accused. Modern human rights have been modeled in the favor of accused persons. The essence of criminal investigation was to provide relief to the victim by collecting evidence against the accused but the umbrella of this, accused persons have been terrified by putting them in illegal detention and by using physical torture. Hence, the transformation of outdated system of criminal investigation system to modern scientific criminal investigation system is the need of the hour to provide relief to the victim and at the same time to ensure dignity of accused persons unless proved.

**Keywords:** Rights, Rights of Accused, Human Rights, Trial, Fair Trial, International Legal Rules, Legal System of Pakistan

### 1. Introduction

Diverse Lapses in Criminal Investigation System in Pakistan has marred the rights of the accused. Despite prevailing various Laws in constitution and legal system, law enforcement agencies have damaged the dignity of accused person owing to the outdated and traditional methods of criminal investigation and it needs to be redefined to ensure rights of accused. Rights of accused are recognized and protected in all international and national legal instruments. These rights include right to life, right to dignity, and right to impartiality etc.

Before few decades, these rights have gained acceptance all over the world and same is recognized by the Pakistan in its all constitutions and legal systems. In modern world, these rights are protected in theory as well as in practice. But in Pakistan like developing countries, these have been infringed by the law enforcement agencies due to many reasons. In Pakistan besides FIA, CID, etc. Police is the main force to detain accused persons and to collect evidence against them for presenting them in the courts of Law to punish them. Alas! The methods of our law enforcement agencies are outdated and traditional owing to their colonial legacy.

Illegal detention, physical torture including use of third degree, illegal detention of relatives of accused, all these factors have raised the question upon the genuineness of criminal investigation system of Pakistan and resultantly, rights of accused have affected badly. Justice ability of accused rights need a greater understanding of relation of these rights with human life and dignity. Human life and dignity are those rights which are justiciable and recognized as fundamental rights of individual and almost same are applicable for accused person.

#### 1.1. Issue of Rights

The hardest issue for the non-practicing of the rights is lack of education and awareness among the masses of the country. People do not know about their rights. So, they are exploited by the Police by various ways. Surprisingly, the country which has been established in the name of Islam and Islam is the Champion of Human Rights and Human Dignity, we have not even considered these Islamic principles in practice. No matter, these rights exist only in theory. It is obvious that rights of accused are violating by law enforcement agencies during course of criminal investigations. Crime is a world phenomenon and with course of time, it is going to be a complicated one. All over the world especially in technically developed countries, criminologists, detectives are adopting new methods to beat the crime through latest criminal investigation techniques. But in the country like Pakistan, the sources of criminal investigation are mostly the same as were in the past. What are the traditional modes of criminal investigation? What are the modern facilities to carry out the criminal investigation? What pattern, what trends and reality are prevailing at our police stations to conduct the criminal investigation and by how rights of accused are infringed? More than this, a comparison of traditional mode of criminal investigation and modern scientific mode of criminal investigation has been made elaborately to conclude that which method is more practicable in order to protect the rights and dignity of the accused person.

### 2. Literature Review

Twenty-first century society is clearly different from nineteenth century society. He is a P.P.C. And Cr.P.C. Insufficient, sometimes old and in many cases useless. Change is inevitable. President General Zia issued the Qisas and Diyat and Hudood laws in 1979 and the Martyrdom Act in 1984. It was a half-hearted effort. Lack of P.P.C and Cr.P.C. There are more than enough to meet the daily necessities. Although the Code of Criminal Procedure, 1898 is the basic criminal procedure law of Pakistan, we still find in our 1973 constitution some provisions relating to criminal protections provided to the accused in the form of various articles such as right to

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life and liberty. Article 9), arrest and detention (Art. 10), protection against previous convictions (Art. 12), protection against double jeopardy and self-immolation (Art. 13).

In the nineteenth and twentieth centuries, the followers of Syed Ahmed Shaheed resisted British rule in India in the name of Jihad. In search of independence from British rule, they settled in the tribal area now called FATA of Pakistan and secretly collected men and things from India. Fazal Elahi, one of the group's followers, initially raised funds and recruitments and eventually took over leadership responsibilities in Chamrakand (Bajaur). His struggle against the British tells the story of the jihadist activities of that time. This article explains how he became a mujahid and how he fought against the imperialist power.

Forensic science is a great help in criminal justice through crime prevention and fair investigation. DNA profiling / typing is one of the forensic techniques used to investigate most cases and seek justice. The current communication relates to DNA profiling assistance in criminal investigations in Indian criminal justice, its testimonial value and features of the DNA Bill 2017. Forensic science establishes the relationship between the occurrence of a crime, the perpetrators, the victims, the weapons, the place and the time, whether it can be absent or present through forensic science. We can say that there is an urgent and silent need to apply forensic science in the present Indian justice system.

A fair criminal trial plays an important role in maintaining and disposing of justice in the country. In Pakistan, an effective and fair criminal trial could not be ensured in the country for a variety of reasons. The two main agencies that can alleviate the suffering of the people through effective criminal investigations and the provision of a fair trial to the people of the country are the Judicial and the Police Departments. The government can arrange a suitable environment for this. The dream of an effective and fair trial in the country cannot be realized unless all the stakeholders of the country's criminal justice system work together. The research paper has been chosen because the standard of justice in Pakistan is declining day by day.

Mountbatten presided over the transfer of power, which included both independence in 1947 and the partition of the subcontinent. During the partition of India, it was decided to work for or against the inclusion of the will of the people in Pakistan through the democratic process. In the two major Muslim-majority provinces of Bengal and Punjab, it was determined by the votes of their representatives in the legislature. In NWFP, Balochistan and Assam, however, it was decided through a referendum. Mountbatten, using his discretionary powers, refrained from dismissing Dr. Khan's ministry. As a result, the government of Pakistan dismissed him after its inception, as it believed that the Congress party should remain in power. Has lost every legal or moral basis.

The effectiveness of decisions is based on the quality of the tests. In this regard, the role of courts, prosecution and lawyers is very important to make the fair trial a reality and also a society that respects the rule of law is needed. Everyone has the right to a fair trial in any case. A fair trial is not just a right but a set of rights. An independent, competent, impartial judiciary is important for the protection of the rights available to any accused at the trial stage. This study initiates a debate on the rights of the accused, which are provided at the trial stage through international legal law and Pakistan's legal system. The study explains the fair trial and related rights in the light of various international documents.

Pakistan, being an Islamic republic and a signatory to many universal instruments of human rights, has a responsibility to ensure the protection of the human rights of every citizen. Female offenders can be classified as juvenile offenders because all of them have been treated differently, which gives women and juvenile offenders more rights than adult defendants under criminal law procedures. The constitution, written or unwritten, is considered a historical document that gives rights to the articles of the state and most of the human rights of citizens are derived from the constitutional document.

The mobile crime scene investigation team plays a key role in sorting out several important and sensational crimes in Rajasthan (India). It is important that the scene investigator acknowledges that the physical evidence from these scenes may go beyond itself. The nature of the crime may give the investigator an idea of the type of evidence available. In the present newspaper, a sensational case in the history of Rajasthan forensic science, in which four members of the same family died at their residence.

### **3. Research Methodology**

#### **3.1. Universal Declaration of Human Rights**

This is the first formal instrument signed by many countries of the world unanimously to ensure the human rights including rights of the accused. There are following few articles which we are going to discuss to elaborate rights of the accused:

#### **3.2. Equality**

According to Article 1 of universal declaration of human rights, all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. No one is presumed to be superior to others whether he is king or poor, he should be treated equally in the eyes of law. No one is above the law. Law is supreme and everyone is presumed obey it in true spirit.

#### **3.3. Right to life and liberty**

According to Article 3, everyone has the right to life, liberty and security of person. Nobody can be deprived of his life and liberty except in accordance with law. As life is first and foremost right of every individual. So, his life should be secured. He can deprive of his life according to the law of the land for true spirit of justice. After life,

liberty of anybody cannot be snatched aggressively. Although, it is not absolute right and same can be restricted in the best interest of state for some time and in some area of the state.

### **3.4. Dignity**

According to Article 5, no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. So that every accused person should be treated with dignity and respect. According to universal declaration of human rights every accused is entitled to human dignity and respect and no one has right to torture him in an inhuman way. Whether it is law enforcement agency or any department of the state. He is entitled to treat in a human way.

### **3.5. No Arbitrary Arrest**

According to Article 9, the state should not allow anyone to arrest, detain, exile, etc. Arbitrarily. It should be according to strict action of law. Status of person should not be considered in the eyes of law.

### **3.6. Impartial Tribunal**

According to article 10, the judges should be impartial the trial should be free and fair the judges should not be prejudiced against the accused person. They should determine the rights and duties impartially against the accused.

### **3.7. Everyone is presumed to be Innocent until Proved**

According to article 11, the accused is considered to be innocent in the eyes of law until he proves guilty. He should be given abundant chance for proving his innocence. He should not be forced for any kind of guilt. He should be free to prove his innocence.

### **3.8. No Retrospective Punishment**

There should be no retrospective punishment. Everyone should be punished according to the prevailing law of the land. The penalty for the committed offense should be according to the severity of the committed offense. It should not be more than this.

### **3.9. Prevailing Legislation of Rights of Accused in the USA**

In original constitution of USA, there was nothing about rights of accused. But soon after it, the pioneers realized the need for constitutional protection to rights of accused. So, they incorporated first ten amendments in the constitution which are called Bill of Rights.

There are following few amendments which protect and ensure the rights of accused:

#### **3.10. Fifth Amendment**

An accused is free to question or answer any kind of question put on him by the state agency. He is free to refuse any question for his defense and nobody is empowered to force him to answer that question. He cannot be incriminated by the state just by putting questions upon him. It depends upon the will of the accused to answer a question or refuse it in a straight way.

#### **3.11. Double Jeopardy**

An accused person cannot be punished on the same offense twice. Once he is punished on the same offense, he is free from that offense. On the other side, if he is acquitted from one offense, he cannot be pleaded on the same offense twice. Though the government has right to go against the accused in an appeal in case of his acquittal.

#### **3.12. The Exclusionary Rule**

This rule is unique example in the criminal justice system of United States of America. It safeguards the constitutional rights of the accused person. It protects the accused person from illegal and ultra vires actions of the law enforcement agencies. It states that this legal principle holds that evidence collected or analyzed in contravention of the defendant's constitutional rights is inadmissible in the court of law for criminal prosecution.

#### **3.13. Right to Counsel**

Every accused has the right to counsel for his defense against the allegation imposed upon him by the prosecution. As we can see it on the case of Brewer Williams (1977) every accused is entitled to the help of a lawyer at or after the time that judicial proceedings have been initiated against him at any stage of charge framed by court of law.

#### **3.14. The Rights of Accused under the Canadian Constitution.**

The rights of the accused have been enumerated beautifully in the Canadian charter of rights and freedoms. It provides bundle of rights to the accused person to secure his dignity and respect. The following rights are enlisted in the constitution:

#### **3.15. No Arbitrary Arrest**

An accused cannot be detained or arrested illegally. His freedom is secured constitutionally.

#### **3.16. Right to Counsel.**

The charter provides the accused person the facility of right to counsel at proper trial against his defense but it discourages facility of counsel at the time of interrogation of police.

#### **3.17. Self-Incrimination**

The charter protects the accused person from self-incrimination. The accused is free to answer the questions put upon him. He cannot be compelled to confess his accusations levelled against him. He is entirely free in case of questions up on him.

#### **3.18. Unreasonable Search or Seizure**

The accused is protected from unreasonable search or seizure. His property can only search only after getting the search warrants from competent court of law.

#### **3.19. International covenant on civil and political rights**

This covenant protects the rights of the accused in a unique way. It provides compensation to the accused in case of violation of the legal rights of the accused. An accused has an enforceable right to compensation against his illegal arrest or detention this safeguards the citizens from false and frivolous accusation. Another article 14 describes that someone who has wrongly punished under law and after the punishment, a new fact discussed and according to it, he is not guilty. So, he is released and compensated for wrongful conviction. This article also safeguards accused from wrongful conviction by the state.

### **3.20. The Rights of the Accused in Saudi Legal System**

The Saudi legal system is not behind other countries to protect and ensure rights of accused. There are following rights which give the constitutional protection to accused against the state agencies:

#### **3.21. Arrest of Accused**

The rights of accused in Saudi Arabia are enumerated in the legal system. When a complaint against someone comes in notice of law enforcement agencies. A notice is served to the accused to come and reply about his complaint. In this case, police do not arrest the accused. But when a person is arrested by the police, the notice requirements do not apply and the suspect may be held indefinitely under pending trial. However, while not mandating anything resembling habeas corpus, the Sharia discourages penal detention in most cases and petty offenders are often released on bail.

#### **3.22. Search by Police**

There are also limitations upon the search of a home. The home is considered a place of particular importance in Islam. Therefore, the private home is considered to be inviolable and a safe heaven. In Saudi Arabia, only the state police are allowed to search homes. Additionally, the police must have a warrant. The state police can search the homes only after getting warrant from competent courts of law.

#### **3.23. Confession by Accused**

In the pretrial context, an accused cannot be compelled to confess a crime. Coerced confessions are void and inadmissible. Although an accused cannot be forced to incriminate himself, the Sharia indirectly encourages self-incrimination by allowing complete forbearance of punishment if an offender comes forward and repents the crime before he is apprehended by the state or formally by accused.

#### **3.24. European Convention on Human Rights**

Justice for compensation has been described elaborately for the accused in the European Convention on Human Rights. According to article 5, no one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law. One of the permitted reasons for deprivation of liberty is conviction by a competent court. For those who are unlawfully deprived of their liberty. Article 5 provides a right to compensation. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation. Any imprisonment which is unlawful under national law will automatically be unlawful under Article 5 and lead to a right of compensation. This article saves the accused from illegal detention and confinement and prosecution cannot easily dare to blame the accused wrongfully he has some solid proofs in his hand against the accused for his conviction.

#### **3.25. Protection of the Rights of Accused under the Constitution of Uganda**

Like many countries of the world, the constitution of Uganda protects the rights of the accused in various ways. It states that the arrest of accused should be on the basis of reasonable cause. If he is arrested by law enforcement agencies, he should be inform about the ground of his arrest. It states that everyone is free and his liberty cannot be snatched until and unless in accordance with law. The constitution of Uganda focuses on the rights of the accused directly and does not spare the law enforcement agencies in any way.

## **4. Conclusion and Recommendations**

During my research, I discovered that it was difficult to provide precise statistics for the current prevalence of infringement of rights of accused persons in categories: torture victims; physical scars, if any, may not be long-lasting; the tortured and those close to them may be too terrified to complain; and doctors and lawyers may be silenced, extra judicial killings, illegally detained, etc. The objective of this study was to analyze rights of accused during criminal investigation by law enforcement agencies of state.

The development of criminal investigation system shows that its method has been shifted from traditional method of criminal investigation to modern method of criminal investigation. The traditional method of criminal investigation is purely torture based and it is against the rights of the accused while modern method is purely based on modern scientific method and technological methods and it has ensured the dignity of accused.

The criminal investigation system was studied thoroughly across the world. The history of criminal investigation system shows that it emerged with the emergence of state. The rights of accused are incorporated in all international legal documents of the world. Almost every country of the world especially one hundred and ninety-three countries of UNO are excelled in incorporation of these rights in their respective constitutions. As almost all are signatories to Universal Declaration of Human Rights and as per this Declaration, all members have bow a promise to incorporate same articles in their respective constitutions. These legislations give guarantee to the accused about his rights.

Despite incorporation of these rights in constitution of Pakistan 1973 and enactment of these rights in legal system and procedure, these rights have been infringed. The upshot of the research is that the rights of the accused person

in criminal investigation in Pakistan are just confined to books of law. In theory, these rights exist superfluously but in practice, these rights do not exist on ground level.

It is need of the hour that we should go for scientific techniques rather than depending on traditional way of criminal investigation by torturing and torturing accused persons. Actually, the large number of changes in the society is forcing us to adopt scientific techniques. Although this is expensive but government should come forward to provide funds as it has become indispensable. The forensic science has its various specialties in various fields. So, it can be concluded that we should adopt modern scientific techniques to cope with modern challenges in the field of crime.

The vital aspect of criminal investigation was to preserve the scene minutely as a physical evidence against the accused. There should be proper documentation at the physical occurrence of crime. If this rule is applied in Benazir murder case, a clear progress was possible. The police which is entirely political should be made non-political. No political interference should be tolerated. The syllabus of training of police should be revisited.

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