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## Pre-Trial Rights of Accused: Comparing Pakistani and International Legal Frameworks

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### Abstract

*The present study intended to compare five pre-trial accused's rights including the right to know the reasons of arrest, the right to be produced before magistrate, right not to be tortured, right of privacy and dignity in Pakistani and international legal frameworks. After following functional approach in comparative legal studies, the present study found that the right to know the reasons of arrest is recognized but its scope in terms of time and language is different in Pakistani and international legal frameworks except UDHR. The study also found that the right of production of an accused is recognized in domestic and international instruments except UDHR; however, the nature, time and scope of the forum differ. Likewise, the prohibition on torture is acknowledged in all national and international legal instruments with the variation in the scope of this right. The study also noted that the right of privacy is recognized as a conditional right in national and international legal instruments. However, the scope of this right is different in these instruments. The analysis also reveals that the right to dignity is acknowledged as an absolute right in national and internal legal framework with the only difference that ICCPR specifically gives this right to an accused. It is expected that the present study will offer assistance to legislature and judiciary to improve the existing legal framework pertaining to the rights of accused.*

**Key Words:** accused rights, international human rights instruments, fundamental rights, accused in criminal administration of justice, accused in police custody

### 1, Introduction

The term "accused" in criminal administration of justice can be defined in several ways; it may mean a person against whom a formal complaint has been lodged by police or the victim, it may refer to a person who is detained on suspicion or it may be a person who is in the custody of the police. However, the term "accused" in the present study is used to refer to any person who is taken in custody by law enforcement agencies on whatever ground or charge. The law enforcement agencies, in every criminal justice system, have the power to detain any person formally charged or on suspicion that he is involved in any criminal activity. It is important to point out that offenses in Pakistan are categorized into two types: cognizable and non-cognizable. In cognizable offences, the police can arrest a person without warrant whereas it cannot arrest a person without warrant in non-cognizable offences (sections 46, 54, and 151 of the code). However, the concept of the rights of the arrested or detained person has also emerged in every criminal justice system of the world. Every legal system of the world and several international or regional human rights instrument grant certain rights to an

arrested person (Pushkarev et al., 2020). These rights may be classified into specific and general rights. The specific rights of an accused are those rights which are exclusively given to accused and general rights refer to such rights which are not explicitly given to accused but are given to every person or citizen including an accused in a particular jurisdiction. The most significant legal instruments granting such right to an accused include the Universal Declaration of Human Rights (hereinafter UDHR), the International Covenant on Civil and Political Rights (hereinafter ICCPR) and the European Convention on Human Rights (hereinafter, ECHR). Likewise, the constitution of Pakistan, 1973 (hereinafter the constitution), the code of criminal procedure 1898 (hereinafter the code) and the various other statutory and by laws also grant several rights to accused.

Numerous researchers around the globe have explored the rights of accused under their domestic legal framework. For instance, Tarase & Talawar, (2013), and Sabu (2022) analyzed accused's rights in India and Roy (1997) examined the violation of these rights in India. George (1990), Rogers, et al (2016), and Shea (2011) examined the rights of accused in American criminal justice system. Sherwani (2019), Hashmi, et al. (2021) and Khoso (2023) studied the rights of accused in Pakistani criminal justice system. Likewise, numerous analysts have studied the rights of accused in international instruments (Zappalà, 2010, Abad, 2018, Jorgensen, 2004, Weissbrodt & Zinsmaster, 2011). Equally, there are number of studies which have compared the rights of accused in international instruments and a particular jurisdiction (Al-Eshaikh, 2005, Schaefer, 2009, Hussain & Khanam, 2021, Mahmood, 2021). These studies are significant since they discuss the various dimensions of the rights of accused at national or international level. However, these studies have certain limitations which may be described in four points. First, these studies do not comprehensively examine the pretrial rights of accused. Second, these studies do not provide in-depth analysis of the right to know the grounds of arrest, the right to be produced before a magistrate, the right not to be subjected to torture, the right to privacy and the right of dignity in the international and regional instruments pertaining to human rights. Third, the comparative analysis carried out in these studies lack the systematic and scientific approach to carry out the comparative analysis. Four, the studies conducted in Pakistani perspective have failed to analyze the Pakistani legal framework in the light of the international and regional human rights instruments. The present study intends to address these gaps by offering a systematic comparison of accused's right in international and Pakistani jurisdiction by paying special attention to the unexplored areas regarding the rights of accused. In addition, the objective of the present study is to analyze the differences and similarities between Pakistani legal framework and international instruments including UDHR, ICCPR and ECHR.

It is necessary to mention that there are a bundle of pre-trial rights of accused including right to be deemed innocent, right to have legal assistance of advocates, right to remain silent (Gomez, 2004), prohibition against cruel treatment, right to release (George, 1990), the right to know the grounds of arrest, the right to be produced before a magistrate, the right not to be subjected to torture, the right to privacy, the right of dignity and the right to fair investigation. However, the present study only examines five specific and general rights of an accused namely right to know the reasons of his arrest, the right to be produced before a magistrate, the right not to be subjected to torture, the right to privacy and the right of dignity. Moreover, the focus of the present study is on the right of accused before the commencement of his regular judicial trial under Pakistani legal framework, UDHR, the ICCPR, and the ECHR. However, the present study does not discuss the specific rights given to juvenile, women, or lunatics. The rest of the paper is structured as follow; the second section critically reviews the selected literature, the third section describes the methodology, the fourth section reports the findings and the last section concludes the study.

## 2. Review of the Literature

Various researchers across the globe have examined the rights of accused from various perspectives. For instance, Kremens (2011) compared the rights of accused involved in international crimes provided in human rights conventions and international criminal law. He pointed out that the safeguards provided by the international courts and tribunals working under the international criminal

law safeguards the rights of accused at better level than human rights conventions. Similarly, Marija Pleić (2020) analyzed the various factors which jeopardize the ability of the detainees to exercise their right of defense while being in detention. The study pointed out the insufficient procedural safeguards resulting in harsh and depreciating treatment of detainees at the hands of law enforcement agencies. It also highlights the conditions which create hinderance for the detainees to exercise their fundamental rights. The author suggests to frame procedural safeguards to enable the detainees to exercise their rights which are available to them under the various international legal instruments. On the same line of reasoning, Asoka Silva (2000) carried out a comparative study of the constitutional rights pertaining to the right to know the reasons of arrest given by the constitutions of south Asian countries and European convention of human rights. The study highlighted the fact the constitutions of the south Asian countries only provided the right to know the reasons of arrest after a formal arrest by the law enforcement agencies as opposed to European convention of human rights which ensured that the person must be informed the reasons of his arrest at the time of his arrest. The author suggested that the South-Asian countries should include this right in their constitutions so that accused may be able to challenge his arrest before judicial forums. Moreover, some researchers have explored accused rights under a specific legal instrument (Taylor (2020)). In addition, the author examined the procedure and requirements pertaining to integrating the rights provided in the instrument into the domestic legal system.

There are also numerous studies which have analyzed accused's rights from different dimensions conducted by Pakistani analysts to understand the scope, nature and implications of the rights of accused in Pakistani legal framework. For instance, some studies have been undertaken to comprehend the rights of an accused and the study by Mariam Sherwani (2019) may be cited as an illustration. This study has not only comprehensively examined the rights of accused but also classified them into four groups namely pre-trial rights, during trial rights, post-trial rights, and exceptional rights. The author pointed out that the Pakistani legal framework failed to provide an effective enforcement mechanism for such rights. Similarly, various studies have been conducted to bring reforms in the existing legal framework or to propose some rights to accused which are not available in the existing legal system. For instance, Qayum at al (2016) deliberated on the causes of wrongful convictions and the mechanism for compensation. The author pointed out that despite the majority of the wrongful conviction cases, there is only one provision in the criminal procedure code indirectly dealing with the compensation for wrongful convictions. They also highlighted the fact that a wrongfully convicted accused faced numerous economic and non-economic consequences but there is no provision in the Pakistani legal frame work for the redressal of their grievance. They suggested to incorporate legal provisions in the existing legal framework to compensate the economic and non-economic damage to wrongfully convicted person. Ramzan et al (2021) examined the existing legal structure and mechanism of the power of the president of Pakistan to pardon the convicted person in light of the teaching of Islam. The study highlighted that the pre-requisite of the exercise of power by the president are unislamic, contradictory with constitutional provisions and hence needed to be reviewed. They suggested to amend the article 45 of the constitution of Pakistan so that the president of Pakistan may be able to exercise the power of pardon in accordance with the injunctions of Islam.

Similarly, Saleem et al (2023) analyzed how the police violate accused's rights during investigation. He pointed out that the police in Pakistan unlawfully arrest accused, and use intimidating actions including physical, psychological and emotional torture on an accused to obtain evidence against him. He suggested to reform the existing legal framework by including penalties for the police so that it may not violate accused's rights. Likewise, various authors have analyzed the status of some specific accused's rights. For instance, Sheikh (2022) examined the provisions dealing with fair trial in Pakistan and at international level. She concluded that the right to fair trial under Pakistani legal system suffered from various lacunas especially the constitutional provision which did not elaborate the ingredients of fair trial. Consequently, she suggested to incorporate the provisions in the Pakistani legal framework providing the ingredients of fair trial. On the same line of reasoning, the right of an

accused to be released on bail was examined by Zahoor et al (2022). He analyzed the nature, scope and various kinds of bail and recommended the courts to release every accused except in exceptional cases since this right is flexible in nature. Likewise, Rashid's (2019) study investigated the current state of legal aid in Pakistan and found that it is not satisfactory.

On the same line of reasoning, numerous authors have analyzed the rights of accused in international instruments and Pakistani legal framework. For instance, Atta ul Mustafa (2017) critically examined the Pakistani constitutional and statutory framework in light of UNCAT giving various rights to accused in cases of preventive detention up to 90 days in terrorism cases. The study pointed out that the anti-terrorism act, 1997 needs to be reviewed since the mechanism provided in the act to review the cases of preventive detention is ineffective. He suggested to place an independent and impartial review board to look into the propriety of detention of accused in terrorism cases. Likewise, Hussain et al.'s (2021) study examined the right of fair trial of accused provided in the international and national legal framework at the trial stage. The authors point out that the right to fair trial occupies the most significant position in both international and national legal framework since this right entails and ensures other rights given to the accused during the trial phase. The authors argue to protect this right since its protection guarantee the other rights of the accused and failure to this right will make other rights of accused useless. They also highlight that the constitution of Pakistan fails to indicate and incorporate the ingredients of fair trial which jeopardize the sanctity of the right of fair trial of accused. Similarly, Muhammad Fayaz (2018) analyzed the international, regional and domestic legislations dealing with the rights of accused before trial in terrorism cases. He pointed out that different states deploy different methods to handle the cases of suspected terrorist and the ways in which their rights may be protected. He also compared various international conventions and treaties with the legal framework of Pakistan and suggested that Pakistan needed to improve the existing legal framework to protect the rights of accused.

The studies discussed in the above paragraphs are significant since these studies discussed and highlighted the important aspects of the rights of the accused. These studies have examined the rights of accused from numerous dimensions by analyzing the general or specific legal framework pertaining to the rights of accused. Some studies have investigated the general framework of the rights of accused and some studies have examined specific rights. Likewise, some studies have recommended to provide certain rights to accused which are not available in the existing legal framework of Pakistan. Similarly, some studies have also carried out comparative analysis of the rights of accused in national and international legal instruments. However, these studies suffer from certain drawbacks which may be described in three points. First, these studies have methodological issues since such studies were carried out without following any recognized and systemic methodology in comparative studies. Second, most of the studies have failed to separately analyze accused's rights available to him at different stages of the legal proceedings. Thirdly, the comparative studies could not provide a comprehensive analysis of the rights of accused in Pakistani law and in all the significant international instruments. The present study, on the other hand, intends to fill these gaps since the current research carries out a comparative study of the pre-trial rights of the accused in Pakistan and compares the nature and scope of these rights with the international instruments. In addition to this, the present study is based on a systematic methodology which the other studies fail to adopt.

### 3. Methodology

The present study was carried out by following the functional approach in comparative legal studies. The comparative methodology was considered suitable for the present study because it was the right methodology to achieve the objectives of the present study. The comparative legal research refers to the research which compares the laws of one country with the laws of other countries or systems to find the similarities and dissimilarities among them and the underlying reasons (Eberle, 2011). This methodology has three major approaches; the functionalist approach, the structuralist approach and the hermeneutical approach. Functionalist approach is the leading (Peters, & Schwenke, 2000), and

productive approach in comparative legal studies (John Reitz, 1998) based on the assumption that the nature of problems and solution of all legal systems are identical (Zweigert et al., 1998). This approach pays attention to facts and involves the examination of the functions which various legal rules and institutions perform in a given legal system (Rheinstein, 1987). Consequently, different legal rules, norms, concepts, or institutions of different legal systems that perform the same functions can be compared in functional approach (W. J. Kamba, 1974). The functional approach is carried out at two phases; the first phase of research is concerned with problem identification and the second phase is about solution identification (Whytock, 2009). However, the functionalist approach is charged on the ground that it cannot take a holistic view of any legal system in terms of its structure and classification. On the other hand, structural approach involves the analyses of legal structure, norm structure, rights-structure and structural relations between them (Samuel, 2014, Lawson, 1977). Likewise, hermeneutical approach is explanatory in nature and is concerned with discovering the culture and mentality of the society behind legal rules (Pierre Legrand, 2009). Since the objectives of the present study was to compare the rights of accused in Pakistani legal systems and international instrument, the functional approach was deemed suitable and hence adopted to address the research objective. The researchers of the present study followed the research methodology suggested by Majeed and Hilal (2022) consisting on the following five steps.

At the first step, the researchers identified the aims and objectives i.e. to understand the similarities and dissimilarities among national and international legal framework related to the rights of the accused. At the second step, the researchers formulated clear and signaled research questions indicating the level and depth of analysis. At the third step, the researchers collected the data (rights of accused given in the constitution, statutory laws, by laws and judicial decisions) from Pakistani legal system first and then from international instrument including UDHR, ICCPR and ECHR. The researchers analyzed the data at the fourth step by adopting outsiders' view to bring objectivity in the analysis and identified similarities and dissimilarities in Pakistani legal system and international instruments. At the last step, the researchers reported the findings in various sections by pointing out the legal provisions, similarities and dissimilarities among them.

#### **4. Findings**

This is the main section of the current research and it reports the similarities and dissimilarities between Pakistani and international legal framework related to the general and specific rights of accused at pre-trial stage. In the present study, the term pre-trial stage refers to the time from the information of the commission of crime to police to the submission of complete challan to the court. This section reports the similarities and dissimilarities among the right to know the grounds of arrest, the right to be produced before the court, the right not to be subjected to torture, the right of privacy and the right to dignity provided in the domestic and international instruments.

##### **4.1. Right to Know the Reasons of Arrest**

The act of arresting a person is very significant for both the administration of criminal justice and the person being arrested since the arrest entails very serious implications for the liberties and the freedoms of arrested person. Due to the serious consequences, this act of arresting a person has been regulated by law providing that the reasons must be communicated to the accused to ensure that his liberty and freedom is not unnecessarily jeopardize. The analysis indicates that accused's right to be informed of the ground of arrest has been recognized in Pakistani and other international legal instruments. For instance, the constitution requires the official authorities to inform the ground of arrest to an arrested person as soon as possible (article 10). On the other hand, there is no provision in the code which necessitates the authorities to apprise accused of the ground of his arrest. The nature, extent, scope and effects of this constitutional right has been elaborated and explained in numerous judicial decisions of Pakistani courts. For instance, the court explained the nature of the information to be furnished to accused in *Government of East Pakistan Versus Mrs. Rowshan Bijaya Shaukat Ali Khan* (1965). The court held that the law enforcement agencies would inform an accused the reasons of his arrest but they were not bound to provide him the charge sheet. The same principle

was further clarified in *Ch. Zahoor Ilahi Versus the State and Others* (1975). The court held that disclosing the name of section under which a person was being arrested was not enough; it is necessary that enough information must be disclosed to accused so that he might understand the reasons of his arrest. Likewise, the effect of failure to disclose the reasons of arrest have been discussed in *Abdul Qadir versus Federation of Pakistan* (2002). The court pointed out that the arrest of any person would be illegal if the law enforcement agencies had not informed the him the reasons of his arrest. There is no provision in the UDHR which requires authorities to disclose to accused the reasons of his arrest. However, ICCPR acknowledges this right by providing that an arrested person shall be promptly informed the reasons of his arrest and the charges against him at the time of his arrest (art 9). The HRC has further explained this right by highlighting that this right is available in all pre-trial administrative proceedings and the information must be sufficient and in clear language so that accused might understand the reasons of his arrest (HRC, 2014). The ECHR contains the same provision which requires to promptly communicate the reasons of arrest and charges to accused at the time of his arrest (Art. 5(2)).

The ICCPR, ECHR, Constitution of Pakistan and the judicial decisions of Pakistani constitutional courts all recognize this right. Moreover, the constitution, ICCPR and ECHR share the similarity that an accused person has the right to know the reasons of his arrest at the time of his arrest. However, the constitution of Pakistan does not require the arresting agencies to promptly inform the reasons of his arrest as opposed to ICCPR and ECHR that requires prompt communication of the reasons of arrest. Similarly, the constitution does not require the law enforcement agencies to communicate the reasons of arrest in the language which an accused understands as opposed to ICCPR and ECHR that requires that reasons of his arrest must be communicated to accused in a language which he comprehends.

#### **4.2. Right to be Produced Before Magistrate**

An accused's right to be brought before magistrate after his arrest is significant on three scores. First, this right will provide an assurance to an arrested that he will be produced before an impartial judicial forum that will assess the legality of his arrest. Second, this forum will also ensure that an arrested person has not been subjected to torture. Third, the production before magistrate will also require the magistrate to assess the reasons of his further detention in law enforcement agencies (Taylor, 2020).

The constitution has granted this right to accused by requiring that a detainee must be produced before a magistrate within twenty-four hours of his arrest (10 (2)). It also prohibits to detain any person in custody without getting permission from a magistrate. However, this right is not available to any legal preventive arrest or detention (sub clause 3 of article 10). Similarly, section 61 of the code incorporates the same principle and it requires the police to produce an arrested person in the court of a magistrate within 24 hours. Furthermore, section 62 of the code imposes responsibility on in-charge police station to inform the magistrate about any arrest made without warrant. Likewise, section 81 of the code requires the arresting officers to produce the arrested person in pursuance of a warrant before magistrate without any delay. Moreover, the consequences of failure to ensure this right and the manners in which this right has to be protected have been highlighted in numerous judicial decisions of Pakistani courts. For instance, in *State Versus Mst. Zuhra Bibi* and another (1996), the court established the principle that the arrest and any subsequent legal proceedings against accused would be illegal if he was not brought in the court of magistrate in 24 hours. Moreover, the court imposed the duty on the magistrate to inspect the locks-up to ensure the provision of this right to arrested person in *Muhammad Sadiq versus province of Sind* (1992). This right has also been documented in ICCPR which requires that any person detained or arrested on a criminal charge will be promptly taken before a judge or a person authorized to exercise judicial authority (article 9, sub-article 2). The HRC has explained the right by providing that "promptly" generally means 48 hours; however, this time may be extended according to the circumstances of each case. Similarly, ECHR contains the same principle in article 4 (3) which requires the production of arrested person in criminal

proceedings before a judge or a person who can exercise judicial powers. However, UDHR does not contain such provision.

The constitution, the code, ICCPR, and ECHR incorporate this right of accused. The constitution, the code, ICCPR and ECHR require the arresting authorities to produce the accused before the judicial forum to assess the reasons of his arrest. However, the constitution and the code does not authorize arresting agencies to produce an accused before any person who is not a magistrate as opposed to ICCPR and ECHR. In addition to this, there is difference of time period within which an arrested person is to be produced before the authorities. The constitution and the code provide 24 hours; however, there is no time period in ICCPR and ECHR though the HRC has interpreted the word promptly as 48 hours. In addition to this, the code requires the authorities to produce an arrested person without unreasonable delay if his arrest is made in pursuant of a warrant of arrest.

#### **4.3. Prohibition against Torture**

An accused's right that he will not be subjected to torture has been recognized globally. The constitution prohibits torturing an accused by requiring that no body will be subjected to torture to extract evidence (art.14(2)). In addition to this, the Torture and Custodial Death Act, 2022 declares custodial torture, rape and death as criminal offenses and authorizes federal investigating agency to investigate the occurrences of such cases in official custody (section 6). Similarly, UDHR prohibits to subject any person to inhuman, degrading or cruel treatment or punishment, and to inflict torture on him (art. 5). The ICCPR contains the same provision with the addition that it also prohibits scientific or medical experiments on any person without their permission (art. 7). Similarly, ECHR also prevents cruel, inhuman or degrading treatment or punishment and torture on any person (art. 3). Moreover, the united nation's convention on torture has defined and placed responsibilities on the states by stating that torture is an unlawful act which produces severe physical or mental pain (art.1) and requires the states to prevent direct or indirect torture on any person.

The analysis indicates that the scope of the prohibition varies in UDHR, ICCPR, ECHR and the domestic law. The UDHR, ICCPR and ECHR encompass cruel, degrading and inhuman treatment and cruel punishment other than torture; however, the domestic laws cover only torture. Moreover, the international instruments do not specify the purpose for which the torture and inhuman handling is prohibited; whereas the domestic laws prohibit torture to obtain evidence from any person including an accused. Furthermore, this right is absolute in international and domestic legal frameworks. The analysis also reveals that the international instruments provide a comprehensive definition of torture as opposed to Pakistani law which fails to offer such definition of torture. In addition to this, the international instruments include mental pain in the definition of torture which Pakistani laws fail to include. Likewise, instigation, preparation and even threat is included in the torture as compare to domestic laws which do not treat all such activities in the definition of torture.

#### **4.4. Right to Privacy**

The "privacy" may include the privacy of home and communication. The right of privacy of home is dealt with in the constitution which states that the privacy of home shall be unfringeable right of every person (Art.14(1)). The Pakistani courts have acknowledged the privacy of home by observing that unlawful entry in some one's home is the violation of their legal right and liberty (Mohtarma Benazir Bhutto and another versus President of Pakistan and others,1998). However, the constitution also states that the law may provide the situations in which the privacy of home may be compromised. It authorizes the parliament to make any law empowering the authorities to disregard the privacy of home while arresting a person (article, 14(1)) and Musali Khan Versus the State,1996). The legal procedure for the law enforcement agencies to enter someone's home is provided in the code. It states that law enforcement agencies may enter in someone's home to arrest an accused after getting warrant from a magistrate, showing it to the occupant and with their consent. The code also empowers law enforcement agencies to enter someone's home even without warrant if they have reasonable suspicion of presence of any criminal or commission of any criminal activity over there. The code

also imposes responsibility on the occupant to allow the enforcement agencies to search or arrest any person (sections 47 to 67 of the Code). Similarly, the Police Order (2002) provides physical and financial punishment for illegal entry of law enforcement agencies into a home (Art.156(a)). On the other hand, the privacy of communication among certain person is safeguarded in Chapter 2 of Qanun-e-Shahadat Order, 1984.

The UDHR also recognizes it and prohibits arbitrary meddling with some one's privacy, family, home or correspondence or attack on their honor and reputation. It also states that everybody has the right to seek legal protection against such interference or attacks (article 12). Similarly, the right has also been documented in ICCPR which declares that no one should have to deal with arbitrary or illegal interference with his family, home, correspondence, or privacy, or illegal attacks on his honor and reputation. It goes on to state that everyone has the right to legal protection from such interference or attacks (art.17). Correspondingly, ECHR states that everyone is entitled to respect for their home, communications, and private and family lives. Additionally, it stipulates that no public authority may interfere with the exercise of this right unless specifically permitted by law, such as when it comes to maintaining public safety, national security, or the nation's economic prosperity, preventing disorder or criminal activity, preserving morals or health, or defending the rights and liberties of others (article 8).

The constitution, the UDHR, ICCPR and ECHR recognize the right of privacy; however, the domestic laws, UDHR and ICCPR do not provide the situation in which the right of privacy may be compromised as opposed to ECHR. Similarly, the domestic laws and the international instruments share one thing common; all these legal frameworks permit the law-making authorities to provide the situations in which the privacy of home or communication may be compromised. Moreover, the nature of this right is different in domestic laws and in international instruments. The domestic laws only recognize the right of privacy of home as opposed to international instrument which acknowledge the right of privacy of correspondence and communication. In addition to this, the international instruments include the attack on reputation in the definition of privacy contrary to domestic laws which do not include such acts in privacy. Moreover, ICCPR and ECHR also recognize the right to seek remedy in case of violation of privacy as a right of individual; in contrast, the domestic laws and UDHR do not contemplate that the right to invoke remedy is a right. Finally, the domestic laws and all the international instruments recognize privacy as an inherent right.

#### **4.5. Right to Be Treated with Dignity**

The term "dignity" refers to a virtue that signified "goodness of someone due to himself," "something noble and beneficial to someone due to himself," and "something good for someone (Najman, 2021, p.320). It can be understood as the public worth of an individual, commonly referred to as dignity. Though, a criminal must face the consequences of his bad act, yet, it is necessary that his dignity must be upheld. Additionally, it touches on the subjects of dignity, reputation, indigenous culture, control over personal data, and biological research, including experimentation (Le Moli, 2019). The constitution also recognizes this right and states that the right to be treated with dignity shall be unfringeable right of every person (Art.14). The various judicial decisions of Pakistani courts have explained and clarified the meaning and nature of the term "dignity". For instance, it was held in *Uzma Naveed Chaudhary and others Versus Federation of Pakistan*, (2022) that dignity of all human being is an inalienable and absolute right which cannot be subjected to any qualification, restriction or regulation (para. 14). Similarly, the constituent elements of the term were explained in *Tahir Naqash and others Versus the State and others*, (2022). The court pointed out that the term has three ingredients. First, it refers to precluding any disrespect and maltreatment decreasing the significance of their humanity. Secondly, it denotes to recognizing the equality of worth among all individuals and lastly, it is not subject to removal or deprivation. The meaning of the term "dignity" with respect to an accused person was explained in *Amjad Mustafa Malik Versus DG, NAB and 4 Others* (2021). The court observed that subjecting an accused to unreasonable conditions of confinement in prisons and displaying him publicly in handcuffs is the violation of his dignity.



The UDHR indirectly emphasizes to respect the dignity of accused. The instrument assures the dignity of accused in its preamble and article 1. According to the preamble, freedom, justice, and world peace are based on the understanding that every member of the human family has the inalienable right to recognize the inherent dignity of every human person. Similarly, Article 1 states that all people are equal in their rights and dignity from birth. The meanings of “dignity of an accused” in the context of the said instrument were explained by HRC in Yong-Joo’s case (2003) by pointing out that dignity is a mixture of many other rights which comprises but not confined to education, healthcare, basic welfare and fair-trial of an accused. Similarly, Article 10 of the ICCPR expressly addresses the dignity of an accused person, declaring that everyone who is denied their freedom must be treated with respect and consideration for their inherent worth. By stating that both the abolition of the death penalty and full acknowledgment of the inherent dignity of every human being are essential to the safeguarding of the right to dignity, the preamble to ECHR European Convention on Human Rights also subtly addresses the right to dignity of an accused person.

Dignity of human being including an accused was acknowledged as an inalienable and absolute human right in all international instruments and domestic laws. However, the ICCPR is the only instrument which specifically requires the respect of dignity of an accused as opposed to other international instruments and the constitution which do not particularly require to respect the dignity of an accused. However, the various decisions by judicial forums given under the UDHR and the constitution have acknowledged and explained the right of dignity of an accused and emphasize to respect the same. Similarly, all the international instruments and the constitution provide that the right to dignity cannot be subjected to any condition or restriction. It reflects that the constitution has adopted all the globally accepted standards regarding the basic right to dignity.

## 5. Conclusion

The discussion in the present study indicates that an accused’s right to get familiar with the grounds of his arrest is recognized in Pakistani and international legal framework with the exception to UDHR. However, this right differ in terms of time and language; the Pakistani legal framework does not provide the time and the language in which accused is to be communicated the reasons of arrest as opposed to ICCPR and ECHR which require to promptly communicate the reasons of arrest in the language which accused understands. Similarly, an accused’s right to be brought before an impartial authority is acknowledged in Pakistani as well as international instruments except UDHR. However, the nature, time and scope of the forum differ in Pakistani and international legal framework. The Pakistani law requires the authorities to bring an accused after his arrest before a judicial officer within reasonable or twenty-four hours whereas the international legal framework do not provide such time limits. In addition, the international instruments allow to produce an accused before any person authorized by law whereas the Pakistani law requires the production of accused only before magistrate. Likewise, the prohibition on torture is acknowledged in national and international legal frameworks as an absolute right. However, the boundaries of this right differ in national and internal instruments. The national legal framework includes only torture whereas the international instruments include torture, mental pain, inhuman and cruel treatment and punishment. Similarly, the domestic law forbids torture to obtain evidence whereas the international instruments ban torture for any purpose. In addition, the domestic law does not include instigation and preparation of torture in its scope contrary to international instruments. The same is the case with accused’s privacy which is a conditional right in national and international legal instruments. However, the scope of this right is different in these instruments. The right of privacy in international instruments include the privacy of home, correspondence and communication as opposed to domestic legal framework which only protects the privacy of home. Similarly, the Pakistani law, UDHR and ICCPR does not provide the situation s in which the right of privacy may be compromised as opposed to ECHR which enlists the situation in which the right of privacy will not be applicable. Correspondingly, ECHR and ICCPR also include the right to invoke the remedy in case of violation of privacy as opposed to domestic and UDHR which are silent on this point. Equally, the right to dignity is acknowledged as an unqualified

right in national and internal legal framework with the difference that ICCPR specifically gives this right to an accused. The present study also indicates that the Pakistani legal framework contains the rights provided in the international instruments with the minor difference of the standards, nature and scope. In addition, the judicial decisions by Pakistani courts have filled the lacunas in the standards, nature and scope of these rights to align the Pakistani legal framework with international human rights instruments.

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