



FAIR TRIALS
ARTICLE 10-A CONSTITUTION OF PAKISTAN,
ARTICLE 6 OF THE HUMAN RIGHTS ACT 1998 & ARTICLE 6 OF THE ECHR

Barrister Dr Anwar Baig,

Senior advocate and Professor of law & Practice

Abstract

This article examines the scope and application of Article 10-A of the Constitution of Pakistan, which guarantees the fundamental right to a fair trial and due process. Introduced through the Eighteenth Constitutional Amendment, Article 10-A reflects Pakistan's commitment to constitutionalism, judicial independence, and international human rights standards. The study analyzes how Pakistani courts have interpreted this provision, particularly in relation to the admissibility of unlawfully obtained evidence and procedural fairness. Drawing upon constitutional jurisprudence, comparative legal perspectives, and relevant case law, the article highlights the evolving judicial approach toward balancing individual rights with the interests of justice. Special attention is given to the influence of Article 6 of the European Convention on Human Rights and the principles articulated in international legal systems. The discussion demonstrates that Pakistani courts increasingly emphasize transparency, equality of arms, and access to justice as essential components of a fair trial. However, inconsistencies in judicial reasoning and practical challenges in implementation continue to affect the effective realization of this right. The article argues that a coherent and principled application of Article 10-A is necessary to strengthen public confidence in the legal system and ensure constitutional supremacy. It concludes that sustained judicial training, legislative reforms, and adherence to international best practices are vital for embedding the right to fair trial within Pakistan's legal framework and promoting the rule of law.

Keywords: Article 10-A, Fair Trial, Due Process, Constitutional Law, Judicial Independence, Human Rights, Pakistan, Rule of Law

INTRODUCTION:

The question indicates, it was the opinion of Lord Steyn, a prominent Lord in the judiciary who provided the legal world with many legal judgments and precedents, that it was not a principle of the European Convention of Human Rights that unlawfully obtained evidence is not admissible in Court.

The importance of Convention law lies in the fact that the European Convention of Human Rights (the ECHR) has been incorporated into UK law by the passing of the Human Rights Act 1998. Article 6 of the ECHR provides for the right to a fair trial, and encompassed within this is many rights and principles of evidence in order for that fair trial to be affected. It was considered by Lord Steyn that despite this, there was no principle of Convention law that outlawed the admissibility of unlawful evidence, and thus UK courts were able to admit evidence that has been obtained unlawfully.

However, this judgment was passed in 2001 and many years have passed since that date. There have been important developments in the law of evidence both in UK law and in how human rights laws affect the laws of evidence in the case-law of the European Court of Human Rights. This essay will analyze whether Lord Steyn's statement remains accurate in light of both developments in English law and the case-law of the ECHR which by their very nature bind English law and thus must be taken into account of. It analyses first the different arguments that Courts face when looking at whether to admit evidence that has been said to have been obtained unlawfully. It goes on to analyze UK law since the judgment of Lord Steyn, and notes that essentially Lord Steyn's assertion has remained valid law, but is undermined by the fact that there are many limitations and exceptions to the general



statement Lord Steyn has made. It then looks at what part the European Convention has had to play in these limitations and exceptions, and sees that again while European human rights law is as per the position stated by Lord Steyn, human rights law has developed to provide that certain rights including those contained in Article 6 and Article 3 undermine the idea that all unlawfully obtained evidence is admissible. The essay concludes by concurring with Lord Steyn's statement but finding that Convention law and English law have developed to provide that while unlawfully obtained evidence is not automatically inadmissible, there are questions and factors to consider before deciding that such evidence can be admitted before a Court of law.

OPPOSING VIEWS AS TO THE ADMISSIBILITY OF UNLAWFUL EVIDENCE:

At the outset, it is helpful to point out the differing views that exist as to the admissibility of unlawful evidence, so that these views can be better appreciated when analyzing the judgments in UK laws or where applicable in the European Court of Human Rights based at Strasbourg.

It must be noted that there are potentially two grounds upon which the admissibility of evidence can be questioned. The first is that the evidence has been obtained illegally. This might be for example in obtaining evidence by committing a crime, a tort or a breach of contract. The second ground is that the evidence has been obtained in not what is necessarily an illegal manner, but an improper manner, implying that there is a problem with the morality in the method that has been used to obtain the evidence. Examples of this might be using trickery or deception to obtain evidence.

As indicated above, there are opposing arguments to the questions of whether evidence that has been obtained illegally or improperly should be allowed into the courts. One view is that the fact that the evidence has been obtained illegally or improperly means that there is no way in which it should be accepted into the courts – for this effectively amounts to a contravention of the law in order to uphold the law, which is a contradiction in terms. Such an argument would be based upon the view that the ends never justifies the means, and it would not be justifiable to commit a minor illegality or impropriety in order to convict against a larger illegality or impropriety.

There are those that raise the argument however that the end does in fact justify the means, and consider that in determining whether unlawful or illegally obtained evidence should be used in courts, one must conduct a balancing exercise between the benefits to be gained by the use of the evidence and the morality issues come across in obtaining the evidence unlawfully. In conducting this balancing exercise, they would say that it is permissible to obtain evidence by lying or deception for example, or even something that contravenes the law slightly, in order to ensure that the wider objective is pursued, that is of respecting the law in general. Proponents of this view would also point out that in general it is the law-enforcing authorities that are obtaining the evidence. These arguments are reflected in the case-law and shall be come across in the analysis below.

ARGUMENTS PROVING THE VALIDITY OF LORD STEYN'S PROPOSITION:

When one looks at UK law, it does appear that the judgment of Lord Steyn has been upheld, namely that there is no law that provides that unlawfully obtained evidence must be held to be inadmissible.

The principle enunciated by Lord Steyn can be seen in cases as far back as 1861, namely in the case of *R v Leatham*. In that case, evidence which was attempted to be used in the Court was challenged as being brought about through an unlawful manner and contended to thus



not be admissible in the Court. Crompton J on deciding on that particular issue found against this proposition and stated: 'It matters not how you get it; if you steal it even, it would be admissible in evidence'.

Another case which illustrates this principle is the appeal case of *R v Son of Kaniu Kuruma*. In that case the defendant had been stopped by police officers. These police officers were not of sufficient seniority to carry out a personal search and had yet proceeded to do so anyway. The defendant was found with ammunition in his pocket and taken to court on the count of possession of weapons, with the fact that the police officer had found the ammunition being sought to admit as evidence in the Court. The evidence was admitted and the defendant convicted. The defendant appealed to the Privy Council on the basis that the evidence used should not have been admitted. This appeal was however dismissed. Lord Goddard CJ stated that the question to ask when determining whether evidence should be accepted into Court was whether it was 'relevant and admissible'. He stated that where this criterion was satisfied, the Court was not concerned with how the evidence had been obtained, and stated that this was proposition was backed up by many cases in English law. Thus, Lord Goddard CJ stated: 'While this proposition may not have been stated in so many words in any English case, there are decisions which support it, and in their Lordships' opinion it is plainly right in principle'.

Although these cases pre-date Lord Steyn's judgment, the fact is that they are still seen as good law and are seen still as precedent for the principle that English law does not have a rule expressly outlawing the admissibility of evidence that has been obtained in an unlawful or improper manner. Looking at it from this perspective therefore, the proposition stated by Lord Steyn does appear to still be accurate.

Indeed, one can see that even in modern day cases in English law, Courts will accept evidence that has been unlawfully obtained. One example of this is in cases where an agent provocateur has been used, where the fact that a misdeed has been elicited rather than carried out of completely a hundred per cent natural circumstances is not preventative of evidence of that misdeed being admitted into courts.

However, there are exceptions to this rule. There are particular instances where the law provides that a certain category of evidence that has been unlawfully or illegally obtained cannot be used in proceedings. These categories will be examined to illustrate what impact they have on the validity of Lord Steyn's statement.

ARGUMENTS LIMITING THE IMPACT OF LORD STEYN'S STATEMENT:

As noted above, while the general principle of UK law is that there is no law that expressly prohibits the admissibility of unlawful evidence, there are certain instances where evidence will be excluded as a matter of law. One such category is confessions that have been made by an accused. s.76(2) of the Police and Criminal Evidence Act 1984 provides that any confession that has been obtained by oppression and in consequence of anything said or done which was likely, in the circumstances to render unreliable any confession which might be made by the defendant in consequence of such oppression is to be excluded from admissibility.

The view set out in PACE, namely that any evidence obtained by oppression should automatically be excluded as admissible evidence, has gained much support. Thus, the Criminal Law Revision Committee has consistently agreed with the statement that evidence obtained by oppression should be automatically excluded from the Court, as has the Royal



Commission on Criminal Procedure. Their views were based on the idea that society in effect abhors practices oppression people, and they should therefore not be condoned in any way.

In addition to PACE outlawing 'oppression', Article 3 of the European Convention of Human Rights, which as pointed out above has been incorporated into UK law by the passing of the Human Rights Act 1998, imposes a prohibition on torture or inhuman or degrading treatment. In order to see the emphasis that the ECHR places on this prohibition, one can see how the rights provided in Article 3 have been classified by the Strasbourg Court. The rights provided for in the ECHR can be classified as 'absolute rights' or as 'limited rights'. Limited rights are those that must be respected, but in certain circumstances and for certain purposes can be interfered with. One example is the freedom of assembly or association contained in Article 11, which provides that there must be no interference with the right to such freedoms unless it is for a lawful purpose, which can be for example public safety or national security. Furthermore, limited rights can be derogated from in war-times situations: Thus, if the UK is in a state of conflict it would be able to enter a notice that it was derogating from certain rights during that conflict, providing for example that the right of the freedom of assembly and association would be limited during the war-time in order to preserve national security. As long as such limitations were lawful and proportionate they would be considered to be in compliance with human rights law.

In contrast to this, certain rights are classified as 'absolute rights'. These are rights that cannot be limited for any purpose and cannot be derogated from, even in a war-time situation. One example of this is the right to life. Another example, importantly for the purposes of admissibility of evidence, is the prohibition on torture. Thus, the European Court of Human Rights has provided that the prohibition on torture is an absolute one. Indeed, Strasbourg case-law emphasizes the prohibition on torture so much so to the extent that the extradition of one person to a third country where it is considered that he faces the chance of being subject to torture is seen as amounting to a contravention of Article 3.

As stated above, the importation of the ECHR into the UK law has meant that all UK public bodies, are now under a legislative duty to give effect to the ECHR. There is an interpretative duty on public bodies, including courts, providing that where possible legislation must always be read in light of the ECHR in order to give effect to Convention rights. This affects legislation brought about even before the 1998 Act. As such, the use of the word 'oppression' in PACE must be read in a way which would give effect to the rights contained in the ECHR and pertinently in the case of that particular definition to the prohibition of torture contained in Article 3. Thus, s.76 of PACE now defines 'oppression' as including 'torture, inhuman or degrading treatment, and the use or threat of violence (whether or not amounting to torture).' Furthermore, in case-law of what amounts to oppression, English Courts have looked to the jurisprudence of the European Court of Human Rights to see what amounts to 'torture' and thus 'oppression'. Thus, for example Courts would look to cases such as the *Greek Case* and cases of *Ireland v United Kingdom*, to analyze what practices can be seen to amount to torture and use of which would render evidence obtained by those methods as automatically inadmissible.

That is the approach of the UK Courts in taking in account of the ECHR. The question of how practices of torture would affect the admissibility of evidence has become a question that is increasingly raised in modern times. With the advent of terrorism and increasingly questionable anti-terrorist measures, there have been a number of cases where evidence which is said to implicate alleged terrorists has been obtained by torture and the courts have



had to consider whether to admit such evidence or not. The opposing arguments for the admissibility of unlawful evidence set out at the start of this essay come to the fore in such cases: For here the Courts are balancing whether the fact that there has been unlawful activity in obtaining the evidence against the fact that the evidence is capable of implicating alleged terrorists, who are themselves said to have been involved in large-scale unlawful activity, perhaps with more serious implications than the torture had.

Such arguments came to the fore interesting and useful for the purposes of this essay in the UK case of *A v Secretary of State for the Home Department (No 2)*. The Courts concluded in that case that to accept that evidence obtained by torture in a UK court would go against the very constitutional principles of the UK and the Court. They thus held that the evidence could not be accepted as a matter of UK common law.

The UK House of Lords also went on to analyze how the evidence would be treated under the European Convention of Human Rights. It found that the ECHR in expressly providing for a prohibition against torture in Article 3 took account of the UN Convention against torture and other cruel, inhuman or degrading treatment or punishment 1987 and that this was an absolute right that had to be given effect to by interpreting the legislation in a way that was always in accordance with the prohibition against torture contained in Article 3. The House of Lords thus found that it would be inconsistent with Article 3 of the Convention to provide that evidence obtained by torture would be admissible, and thus held that such evidence would be inadmissible on the basis of Convention rights as well as the common law.

As well the torture case, there are cases where the European Court of Human Rights has considered that evidence that is brought about unfairly should not be included in evidence used in proceedings.

As set out in the introduction, the main Convention right which impacts upon rules governing the admissibility of evidence are those contained in Article 6. Article 6 provides for a right to a fair trial and there have been instances where the European Court has held that unlawfully obtained evidence has infringed the right to a fair trial. Thus, while it is perhaps correct that the European Convention does not have a specific rule outlawing inadmissible evidence, it does have a rule that any inadmissible evidence which contravenes the right to a fair trial is a contravention of Article 6 and thus should not be admitted. Thus, when cases have been brought to the Strasbourg court alleging that the right contained in Article 6 has been contravened because evidence which should not have been admitted has in fact been admitted, the Strasbourg Court has undergone a balancing exercise. The Court examines the way the evidence has been obtained and the impact the evidence has had on the trial. If for example unlawful evidence had been admitted but it has not had a large impact on the findings in the trial, the Court would state that there was no contravention of the Article 6 right.

One of the cases in which this can be seen most clearly in is the case of *Schen v Switzerland*. In that case, a man had been accused of commissioning an assassin to kill his wife and in his case before the Swiss national courts was convicted of such an offence. Part of the evidence brought forward against the man was recordings of telephone conversations that he had with the assassin he allegedly commissioned to kill his wife. It was contended, and subsequently accepted by the Swiss government, that these recordings had been unlawfully obtained since they had been recorded secretly and there was no authorization for such recordings. The argument was brought forward that the use of such unlawful evidence automatically breached the right to a fair trial under Article 6. The Court however did not accept that there was such



an automatic breach and rather went on to look at all the circumstances of the case and see whether there could be found to be 'overall fairness'. The Court found that while there was a variety of evidence in this case, the secret recordings was a determinative piece of evidence and it was unclear whether without those secret recordings, the trial court would have convicted the defendant. The Court thus found that there had been a contravention of Article 6 rights and quashed the trial court's decision.

The European Court's finding in this instance can be seen to go against the proposition put forward by the UK Courts, namely that there was little concern with how evidence has been obtained, the concern was that it was relevant and admissible. In the above case there was no contention that the recordings were accurate, the recordings were accepted by both parties as having actually taken place. On a common-sense view of what the UK courts had said, that evidence would be accepted. However, the European Courts found that to do so would contravene the essence to the right to a fair trial. This greatly undermines the statement made by Lord Steyn that there is no rule of Convention law against the admissibility of unlawful evidence.

However, as stated above, the Court will not automatically find that Article 6 has been breached. This can be seen in the case of *X v Germany*, what can be described as an 'agent provocateur' case. The two applicants before the European Courts were defendants that had been arrested in Italy. They had been placed in a prison cell with an Italian undercover officer. The undercover officer entered into conversations with the defendants who disclosed information about the offences they were accused of. These conversations were used as evidence in the trial and the defendants were subsequently convicted, a conviction that was challenged before the European Courts. The Court looked into whether the evidence that had been admitted could be seen to contravene Article 6. It found that in this case, the defendants had actually spoken freely to the undercover officer rather than being coerced to do so. As such they found that there was no problem in the use of the evidence and there had been no violation of Article 6.

In summary of the position of the European Court, it can be seen that while there is no rule that automatically excludes unlawful evidence as inadmissible, if it is considered that such evidence contravenes Article 6 of the European Convention of Human Rights, then that evidence is not considered admissible. In coming to this finding, one must bear in mind that UK Courts as public authorities are bound to read legislation and make rulings in line with the rights provided for by the Convention and so would be bound by such rules.

Moreover, while the above has illustrated that there is no law of the UK which excludes unlawful evidence, this is not the same thing as saying that all unlawful evidence will be admitted. The way one sees UK law operate is that while it does not provide that unlawfully obtained evidence must be immediately outlawed, it does provide a discretion to the judges in a particular case to be able to exclude evidence that has been unlawfully obtained. Thus, the case of *R v Sang* provided that while unlawful evidence did not have to be excluded from proceedings, judges in criminal proceedings did have the discretion to do so. The question that the judge is required to answer is to consider whether the evidence has a prejudicial effect that outweighed its probative value. If so, the judge was required to exclude the evidence. Judges can therefore be seen to be undertaking a balance exercise similar to that undertaken by the European Court of Human Rights, although of a slightly different nature. It is also notable that judges in civil proceedings too have the discretion to exclude evidence that would otherwise be admissible. The test for civil courts to consider is whether



admissibility of the evidence gives rise to the ‘overriding purpose’ of the courts, namely fairness.

CONCLUSION:

In conclusion, it can be seen that the finding of Lord Steyn that there is no principle of Convention law that unlawfully obtained evidence is admissible is true, but only to a certain extent. Thus neither UK law nor Convention law has a rule that automatically excludes unlawfully obtained evidence. However, there are exceptions to this rule. Evidence that is obtained as a result of oppression or torture is considered both by the Strasbourg Courts and therefore the UK Courts to contravene fundamental constitutional principles and is thus considered to be automatically excluded. Aside from these exceptions, a Strasbourg court will look at how unlawfully obtained evidence contravenes Article 6 rights. If such evidence does contravene an Article 6 right, that evidence is considered to be inadmissible. This is important because UK Courts are under a duty to interpret and provide for law in a manner that is consistent with Convention Rights and thus must take this case-law into account. Similarly, UK courts have been granted discretion to exclude unlawfully obtained evidence where it is considered that its prejudicial value outweighs its probative value. As such, the position of the law can be described as while not containing an express prohibition against unlawfully obtained evidence, there is simultaneously no law providing that unlawfully obtained evidence is lawful, and the evidence must be examined to see whether it is to be admitted or not.

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