

Field Notes

Female Judges in Southern Punjab, Pakistan

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The concept of justice in Pakistan is very much plural; it is a mixture of the ideal justice of Islam, ideas derived from the Anglo-Muhammadan traditions, customary laws and modern laws made after 1947. People usually do not prefer to go to the courts as it is expensive, time consuming and involves long procedures, and in the end the justice delivered may not be in accordance with the expectations of the recipient. Therefore, commonly poor people use the traditional alternative methods of resolving their disputes, i.e. conflict resolutions outside the courts. Moreover, the various legally plural systems work jointly in interaction and understanding with each other. This means that there is a wide network of informal and formal interaction of the courts. The system becomes complex as it combines with negotiation, manipulation, power plays and many other cultural, political and social pressures. The subordinate courts of the country, where most of the female judges are working, have closer relations to the informal justice system of the country as these courts are situated near to rural areas from where most of the population comes.

Though most of the legal activity exists outside the legal system of the country in the non-official sphere (it is inadequate to talk about the legal system centralised around court decisions) still the law professionals, i.e. advocates and judges tend and try to look at the law in a strict legal positivistic perspective. This helps them in maintaining a powerful position. But consciously or otherwise their interaction with the informal, non-state legal sphere is unavoidable, as their clients mostly come from backgrounds wherein the understanding of justice is legally pluralistic.

The movement for the independence of the judiciary in 2007 had large-scale popular support because of general dissatisfaction with the state courts, suicide bombers, shortage of electricity and disillusionment from the politicians of the country.

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However, in the post-movement period many reforms were made in the working of the subordinate courts, employment of the female judges on large scale is one of them.

This paper (field notes) present empirical data collected in 2012 consisting of interviews from female judges mainly from the South Punjab obtained from the permission and consent of the relevant Districts and Sessions Judge. Here it will be worth mentioning the work of Livia Holden and Marius Holden based on the project Lady Judges of Pakistan started in 2009 and whose first outcome is the documentary film “Lady-Judges of Pakistan” due for release in December 2012.³ Livia Holden has presented her works at several venues in Pakistan and has communicated with me many of her findings. The present article even though it might contain views and use methods that are not endorsed by Livia and Marius Holden is inspired from their work.

We will study the existence of recently increased number of female judges in the lower courts of Pakistan and how they respond and adjust to not only a complex structure of legal pluralism but also seek to strike a balance with “gender equality”, which becomes a natural demand for them in a male dominated culture i.e. dealing in a “manly” way, which mainly consist of negotiations and upholding of predominantly feudal values.

Firstly, when working on an equal status and position with their male colleagues, they are expected to deliver justice like men. They say, “we should not think we are women, but on the seat of judge we are like a man”. This also means that there is pressure to understand equality in the sense that if at all they have entered this profession; they should be “like their male colleagues”. If they do not and cannot fulfill this demand their very credibility as competent judges may be challenged.

Secondly, their struggle to meet the demands of a challenging job goes side by side with pressures for the daily running of the household and persisting old pattern of the family where they still are mainly responsible to run the domestic affairs. The traditional concepts of the family and motherhood are tied to the perception that women as basically responsible for the household and as primary caretaker for the sick in the family.

Thirdly, the effects of globalisation can be strongly seen in Pakistani society, some might say more than anywhere else in the world. In response there is a rising wave of conservative radicalism, wherein the space for human rights values and gender equality is getting narrower every day.

Let us examine the structure of the courts in Pakistan to see in context of female judges where they are placed in the hierarchy of this organisation.

The Structure of the Courts and Legal Profession:

The Supreme Court and Female Judges: Supreme Court is the apex court of the land, exercising original, appellate and advisory jurisdiction (Article 184, 185 & 186).

³ The extract (2011) of the film is accessible at <http://www.insightsproduction.net/ljp>

No lady judge has ever been elevated to the Supreme Court of Pakistan. A retired female judge of the High Court says:

Look at the history of courts in Pakistan and how many female judges have been from the beginning. Five female judges were appointed in the High Courts in 1994. Two of them had legitimate expectancy to become Chief Justices of the High Courts of Punjab and Khyber Pakhtoonkhwa respectively. However, both of them were superseded and were allowed to retire without being elevated to the Supreme Court of Pakistan. (Justice Nasira Javed Iqbal, retired).

The Shariat Appellate Bench of the High Court hears appeals from judgments/orders of the Federal Shariat Court (Art 203F).

The High Court and Female Judges:

There is a High Court in each province and a High Court for the Islamabad Capital Territory. According to Article 25 of the Constitution, some sort of gender equality needs to be maintained. If not 30%, then at least 10% judges in all courts should be women. Competent and eligible women are not hard to find if one looks for them. (Judiciary and Gender Bias, Ms. Justice (R) Nasira Javed Iqbal).

Only three female judges were appointed to the Lahore High Court. Two retired judges are Justice Mrs. Fakhar-un-Nisa Khokhar and Justice Nasira Javed Iqbal. One serving judge recently appointed is Mrs. Justice Ayesha A. Malik.

In the Sind High Court two female judges were appointed. Both have since retired, Justice Mrs Kaiser Iqbal and Justice Mrs Yasmeen Abbasi.

Justice Khalida Rashid Khan has been appointed to the High Court of Peshawar (KPT) while no female judge has been appointed in the Baluchistan High Court since the inception of Pakistan.

Federal Shariat Court and Female Judges

The Federal *Shariat* Court consists of 8 Muslim judges including the Chief Justice (Art 203-C). The Court, on its own motion or through petition by a citizen or a government (Federal or Provincial), may examine and determine whether or not a certain provision of law is repugnant to the injunctions of Islam (Art 203-D). Appeal against its decision lies to the *Shariat* Appellate Bench of the Supreme Court, consisting of 3 Muslim judges of the Supreme Court and not more than 2 *ulema*, appointed by the President (Art 203-F). If a certain provision of law is declared to be repugnant to the injunctions of Islam, the government is required to take necessary steps to amend the law so as to bring it in conformity with the injunctions of Islam. The Court also exercises appellate and revisionary jurisdiction over the criminal courts, deciding *Hudood* cases. (Art 203-D). The decisions of the Court are binding on the High Courts as well as the subordinate judiciary.

The question regarding the appointment of a woman as *qazi*/judge or ruler/*hakim* was challenged for the first time in the Federal *Shariat* Court in 1983 on the following

grounds: “1) They discharge their functions of *qazi* without observing *pardah*, which is a clear violation of the injunctions of Islam; 2) During the period of the Holy Prophet and his companions the duties of the *qazi* were never entrusted to females, since it appears to be a violation of the injunctions of Islam; 3) According to Muslim law, the evidence of a woman is half of that of a man and her share in inheritance is equal to half of that of her brother. The judgment of two ladies only can be equivalent to that of a male, 4) Ladies do not fulfill the qualification of *qazi* according to the established principles of Muhammadan jurisprudence.”

The petition was dismissed. The arguments against the petition were interesting. For example, in answer to the third objection against the appointment of women as judges or magistrates that the number of *qazis* to decide a particular case should correspond to the number of witnesses was challenged with the argument, that if such a concept is given effect, it will follow that no male sitting alone can decide a civil or criminal case as according to *fiqh*, in cases other than that of adultery in which four eye-witnesses are required to prove the offence, at least two male witnesses must prove disputes of property or criminal cases of *hudood* and *qisas*.

Moreover, in answer to the second objection for excluding women from appointment as *qazi* because the Holy Prophet or the companions did not appoint any women as such was rejected on the pretext that “we have to see whether there is any express or even implied restriction on the appointment of a female *qazi*. If no such restriction can be inferred, the appointment will be legal in *shariat*.” Some other interesting points discussed in the case and can be relevant for the present paper were limitations regarding female judges being appointed for deciding cases concerning family matters and if the rule of *pardah* could be relaxed in cases of *qazi* women. These points were positively discussed in favour of women.

We do not have much space to discuss this lengthy issue here. The above short description should be enough to demonstrate the positive stand that was taken in favor of female judges in this case.⁴ This judgment was assailed in the Supreme Court through an appeal in 1983. It was however dismissed as time barred.⁵ After a lapse of about 28 years, the matter was brought up again in the Federal *Shariat* Court in 2010 that a woman judge is not competent to decide matters between litigants in respect of a family case. The petition was dismissed on the pretext that judgment of the matter had already attained finality in the apex court of the country hence there was no reason for further interference.⁶

Subordinate Courts and Female Judges

Most of the lady judges are appointed in the lower courts of Pakistan. In the subordinate judiciary, no woman has yet been appointed as senior civil judge. However, there are today quite a number of female civil judges in all provinces.

⁴ PLD 1983 Federal *Shariat* Court 73, Ansar Burney versus Federation of Pakistan and others pp73-93.

⁵ *Shariat* Appeal No. K-1 of 1983

⁶ Federal *Shariat* Court (Appellate/Revisional Jurisdiction *Shariat* Petition No1/L of 2010

The position of higher court judge is considered to be more prestigious than district court judge. Higher court judges increasingly review the judgments of district court judges. This confirms their low status. The district court judges usually have to simply apply the rules and do not play much role in interpretations of the laws, which is mostly done by the High Court and the Supreme Court. The High Court judges have more power and prestige due to fact they can interpret laws in a dynamic way and set precedents. Also, their judgments are published while the judgments of the districts courts are not published, and their judgment can be appealed to the higher courts.

The subordinate judiciary may be broadly divided into two classes: (1) civil courts, established under the West Pakistan Civil Court Ordinance 1962 and (2) criminal courts, created under the Criminal Procedure Code of 1898. In addition to the above, there are other courts and tribunals of civil and criminal nature, created under special laws and enactments. Their jurisdiction, powers and functions are specified in the statutes creating them. The decisions and judgments of such special courts are assailable before the superior judiciary (High Court and/or Supreme Court) through petition for revision or appeal. The provincial governments appoint the civil and criminal courts judges and the terms and conditions of their service are regulated under the Provincial Civil Servants Acts/Rules. The High Court, however, exercises administrative control over such courts. The civil courts consist of a district judge, an additional district judge, a senior civil judge and civil judges class I, II & III. Similarly, the criminal courts comprise of a session judge, an additional session judge and a judicial magistrate class I, II & III. The law fixes their pecuniary and territorial jurisdictions.⁷

Appeal against the decision of civil courts lies to the district judge and to the High Court, if the value of the suit exceeds a specified amount. Similarly, in keeping with the quantum of penalty, appeals against criminal courts lie to a sessions judge or the High Court.

⁷ CIVIL JUDGE 1ST CLASS

1. To try all civil suits, there is no pecuniary limit on its jurisdiction.
2. In certain jurisdictions also designated as Rent Controller.
3. In certain jurisdictions also designated as judge, family court.
4. At Karachi, pecuniary jurisdiction limited to rupees 3 million (Karachi Courts Order 1956);
5. In certain jurisdictions designated as Magistrate empowered under S.30 of Cr.P.C.

CIVIL JUDGE 2ND CLASS

1. To try civil suit up to the value of fifty thousand rupees; and
2. In certain jurisdictions designated as Rent Controller/Judge, Family Court.

CIVIL JUDGE 3RD CLASS

To try civil suit up to the value of twenty thousand rupees.

MAGISTRATE 1ST CLASS

To try offences punishable up to 3 years imprisonment and fifty thousand rupees fine.

MAGISTRATE 2ND CLASS

To try offences punishable up to 1 year and five thousand rupees fine.

MAGISTRATE 3RD CLASS

To try offences punishable up to 1 month and one thousand rupees fine

The jurisdiction of subordinate courts (civil and criminal) have been established and defined by law (Art 175). After appointment, the civil judges are usually attached for a few weeks to the court of a senior civil judge/district & sessions judge to get practical training. They also receive specialised training at the Federal Judicial Academy, Islamabad and in the respective provincial academies. Such training comprises of education in various substantive laws, court management, case processing, judicial procedure, and code of conduct, etc.

As mentioned earlier, the High Courts exercise supervision and control over the functioning of the subordinate judiciary. Such supervision and control is both administrative as well as judicial.

The subordinate judiciary in almost all the provinces operates under some constraints. There is a shortage of judicial officers, their supporting staff and equipment. The strength of subordinate judiciary has not kept in pace with the rise in litigation, due to which huge arrears of cases are piling up and there are enormous delays in deciding cases. As against the recommendations of several commissions and committees that the number of cases pending with a civil judge should not be more than 500, and the number of units pending with a district & sessions judge should not be more than 450 at a time, in actual practice the number of cases and units is far in excess of this prescribed limit. Thus, to alleviate the suffering of litigants owing to delays, the National Judicial Policy Making Committee (headed by the Chief Justice of Pakistan with justices of Federal *Shariat* and High Courts as members) launched on 1st June 2009 the National Judicial Policy. The policy set targets for disposal of cases by the superior/subordinate courts.

Empirical Data about Female Judges

10 judges of the lower courts were interviewed from the South of Punjab. Maintaining a standard of professional confidentiality and keeping in mind the sensitive nature of their job, the names of the judges are presented as ABS, SH and TB etc. and their courts are not named to keep them anonymous. Interviews were conducted in Urdu, English, Punjabi and Saraiki, whichever language was found convenient to communicate with female judges. Few interview questions were drafted in the early stages which were restructured during the interviewing process for a qualitative research.

Extracts from the interviews are presented under the following headings.

Family Personal Life and Profession

The code of conduct for members of the subordinate judiciary⁸ starts by saying, "The judicial power is a sacred trust and divine duty. A judicial officer should exercise it honestly, efficiently and to the best of his capacity keeping always in mind that he is accountable not merely to his superior officers but to God Almighty Himself. He should all the time be conscious of his onerous duty and his integrity."⁹

⁸ It should be understood that throughout in the Code of Conduct wherever the formulation "He" is used it refers to both male as well as a female member

⁹ 2(1) Revised Code of Conduct for Members of Subordinate Judiciary: Sayed Zahid Hussain, Chief Justice 31-10-2008

Moreover, the code of conduct demands a very high standard of character from both male and female judicial officers, it says,

“A judicial officer should be God fearing, law abiding, abstemious, truthful of tongue, wise in opinion, cautious and forbearing, patient and calm, blameless, untouched by greed, completely detached and balanced, faithful to his words and meticulous in his functions.”¹⁰

Generally parents in Pakistan do not want their daughters to join the legal profession therefore our first investigation was about what motivated female judges to join the legal profession.

It has been noticed that most of the young women employed as judicial officers (judges) are unmarried and come from middle class families.

A young female judge NR (CJ (civil judge) Class-11) who did her basic education from a provincial city Rahim Yar Khan and has law degree from the University of Punjab, Lahore a cosmopolitan city, said:

My family did not think that law is an appropriate profession for girls. Nobody in the family encouraged me to join. But I had to struggle for it. Now when I am judge I think they are quite pleased with it.

Another young female judge MA (CJ Class-111) described:

My mother wanted that I should be a medical doctor but I couldn't get the required merit therefore I was left with nothing to do. Then one of my relatives advised me that I should take admission in law. I didn't have any choice so I joined law as a profession. Now I feel that I am lucky enough because I never thought I will become a judge. In fact I did not want to be a working lady at all. It's too difficult to be a working lady.

A young female judge ABS (CJ Class-11) explained in detail:

In fact, my brother not only inspired but even compelled me to join the profession. However, I am very critical towards the profession. Firstly, it's a very hectic job I do not have any time for healthy activities. No time for reading or visiting anybody. I have very short time to rest and then I have to prepare and study files for the next day. I think our working hours should be until 1pm. Secondly; colleagues have a lack of training. Only few are well-mannered.

Another TB (CJ Class-11) goes on to say:

My basic inspirations come from my elder sister who is also a civil judge. The way she raised herself up, I was much inspired by her. Now I get almost Rs. 83,000 as salary it's a handsome amount for the family.

Choice of Husband:

A husband from the same profession seems to be a preferable choice for almost all the female judges interviewed. Interestingly, nobody mentioned the possibility of competition between the married partners.

NR (CJ Class- 11) a judicial officer said:

¹⁰ 2(18) Revised Code of Conduct for Members of Subordinate Judiciary: Sayed Zahid Hussain, Chief Justice 31-10-2008

If a husband is from the same profession we can understand each other better. We can easily adjust and understand the busy routine.

SH, who is CJ Class 1 and married to a civil judge, has one daughter and two sons. She got the experience of working as a judge for 10 years and said:

I got a harmonious family as my husband is also a civil judge. Because we both are in the same profession we understand each other better. At the home front I always cook the food myself and I am good in cooking and can do all types of cooking. My husband helps me in child care. He can also make good coffee and milk shake. I come from North of Punjab while my husband belongs to South Punjab. There is a big cultural difference between the two sides of the same province. "Couples are made in the heavens" (*Jorey aasmanon paer baentey hain*).

Profession and Family Life

Female judges seem to be aware of the fact that combining busy professional and traditional family life is not an easy task. ABS, who is unmarried (CJ Class-11), explained:

Every female has problems they are performing double duty to take care of the family and profession. Female colleagues are responsible for pick and drop of their children they are always worried. My mother is much worried about my marriage. If I have to be married I have to choose a right person and it's not an easy job. My brother who inspired me to join the profession in fact says that "don't go for marriage.

TB CJ (Class-11) said:

A lady judge has both to look after a family and work. Culturally husband takes rest and you look after children. Though I feel this has to be changed. Sometime I also fight with my husband and sometime try to make him realize especially when he is in a good mode. He likes my job very much he is also trying to get a job in the judiciary.

SAC (CJ Class-1) explained:

Precisely speaking, family life is not a bed of roses for the married lady judges especially because with this tedious job. They have to look after the household matters from miscellaneous chores to teach their kids in the evening along with cooking, attending in-laws or often un-invited guests, so their lives become more mechanical than any other professional person; because they have to work under pressures and threats. I feel that we should be provided with a permanent servant at home like the one army personnel have, who in the evening time can assist us in household matters.

Day care facility for children is of great concern for the married female judges as well as non-married ones, as they know the seriousness of the situation of their married colleagues: NR (CJ Class-11) who herself is not married but understands the problem said:

It is important that judges should not have worries about their family because their attention is diverted. There should be daycare centers for the small kids of the lady judges. So that during the short breaks in working hours they can go and watch their children.

ZMM (CJ Class-111) explained the seriousness of the situation in these words:

The problem is that when there is no such school or center, then what to do? So they are blackmailed by these *maasis* and so called *mais* (traditional maid servants). Some of our colleagues bring the kids to the chambers and make them seated there with the maids. A child gets tired of sitting at one place all the time. Then he/she moves out in the court and sees the prisoners and litigants and listens to their language.

RA (CJ Class-111), whose husband works in a city away from where she is appointed, had so much problem with managing the household and babysitting that she had to call her mother to stay with her and look after the child when she was at work, she explained:

My husband is an advocate working in a different city. We have a son of one year, and my mother has come to live with us and she looks after my son when I am in the court.

Need for Training and Refresher Courses

Most of the newly appointed female judges complained of the lack of training and the difficult time they had to face:

MA (CJ Class -111/FJ) explains it like this:

I have been working for two years since my appointment was made in 2010. My training lasted forty days and was conducted in the Punjab Judicial Academy, Lahore. I think my training was not enough and it was too short, and not very useful. It was just the theory and nothing practical. I think in academy students and sessions judges were relaxed and it was like we were in a university campus. Law moots were held by them but they were not enough. I faced problems due to no experience. Now I am getting over how to pass order and decide the case.

NR (CJ Class-11) said:

I have been a judge since three years. We had only three months training. This was sufficient in the light of the fact that in Pakistan there is dire need of judges. But I think that now and then refresher-courses should be held to overcome the gap of training.

RA (CJ Class-111) however was satisfied with a short pre-post training:

I am working as a judicial officer since two years. I think 3 months pre-postal training was ok for us. We were trained in the administration of justice.

However, most female judges very much felt the need for refresher courses as RR (CJ Class 111) suggests:

I think courses and training are extremely important for the judges as because of the over load of work we do not get time to do the necessary reading and courses can be very helpful in this regard.

Working Place:

Female judges were asked about their chambers and whether they were satisfied with the arrangements. TB (CJ Class -11) narrated:

Our working rooms are such that they were basically made for the men I would like a chamber made for the convenience of a lady judge. Women chamber should be more

protected our chambers are built in such a way that there is easy access from all sides of the room. Sitting place and wash rooms should also be according to the needs of female judges.

Appointments in Remote Areas

Few female judges complained about the problem when female judges are posted in the far-flung areas of Pakistan:

NR (CJ Class-111) described:

Now during the appointment of lady judges especially when they are not married due consideration should be taken not to appoint them to the far-flung places but at the nearest station to their home town.

SAC (CJ Class-1) dwelt in detail on the same issue:

Our job is very hectic and challenging. Though in routine we used to cope with the family and profession if stationed at a nearby place of our permanent abode, but if we are posted at a far flung station, from where we cannot come and enjoy the family life umbrella on a daily basis, life becomes hell due to suffering from multiple problems like insecurity of one's own life and of the children especially. When the mother is working in the court, and their father is also sitting hundred kilometers far away from them, their security and well-being becomes a real issue and their schooling suffers badly. Then health problems sometimes become very serious. In case there is a serious emergency in the middle of the night then at that time when your kid is suffering from acute vomiting, high temperature or during the period if you are in family set up in this situation what to do and where to go if at any time you suffer from some serious health hazard? It becomes a life and security threat but who can come forward to help with such problems of the lady judges? For example, a few lady judges due to long travelling had abortions or even are still suffering from severe backache and spinal cord damage issues.

Female Judges' Comparison with Female Advocates

The situation of female lawyers and the attitude of female judges towards them were discussed. The following are expressions of their feelings towards female advocates.

A Judge NR (CJ Class-111) described:

Before becoming a judge, one is supposed to have two years of practice as a lawyer in the court. During these two years, I realised how difficult it was to be a lady advocate, who usually work as juniors associates and senior advocates do not teach them much. I think it's easier to be a judge than to be an advocate. Position of a judge is more secure than lady lawyers moreover they are in position of power and do not face other problems which lady advocates have to face due to their direct interaction. Finance is the biggest problem for lady advocates I try to appoint them in the local commission to strengthen them.

TB (CJ Class -11) endorsed by saying:

It's easy to be a judge and difficult to be a lawyer. Lawyers should be open to us and should be able to reach out to us. Advocates work hard and research the matters and put them before us. They make it easy for us to make decisions. We add a little to the research they have done. As judges we are respected more than female advocates, and we also enjoy more power and economic security. We can exercise our power to move whole systems of justice to work in a particular way.

RA (CJ Class-111) added:

I got a good attitude towards the lady lawyers. Prior to becoming Judge I myself was an advocate and I know the problems of lady lawyers I also invite them for a cup of tea.

RR (CJ Class-111) declared:

I feel lenient towards lady advocates, and I demonstrate this through my attitude because they have to work very hard. I encourage them and show solidarity towards females struggling in a male dominated profession.

Following are the words of an experienced female judge SAC (CJ Class-1). She understands the issue in an absolutely different perspective:

For me, to be a practising lawyer is a more comfortable and easy job for the ladies, as due to being a freelancer you can cope easily with your family life and there is no constant fear of a domicile's sword being always hung upon your head for postings and transfers to far-flung places away from your family upon an anonymous or false complaint of any Tom, Dick or Harry.

Dress Code

There is no dress code prescribed for the district and sessions court judges. Therefore they follow the dress code prescribed for the Supreme Court and High Court judges.¹¹

The following three statements reflect a moderate viewpoint of dress code among the female judges, and may be representative of the views of female judges: (NR (CJ Class-111) said:

I like wearing simple dress in the court. It should not go to the extent that people would come and watch us like a model. We are here as judges not as models. Generally, I think all female judges give a simple appearance in the courts.

TB (CJ Class -11) said:

We have to look after children I do not have time for makeup. Court is a serious place and make-up and jewelry do not give good impact.

RR (CJ Class-111) stated:

I usually wear the dress in the court in which I feel myself comfortable. I do not do any make-up and wear any jewelry in the court and try to look simple.

¹¹ 2(26) "He must be dressed in prescribed uniform and seated in a dignified manner, but not so as to look a proud man. He should avoid arrogance." (Revised Code of Conduct for Members of Subordinate Judiciary: Sayed Zahid Hussain, Chief Justice 31-10-2008)

Then there are two extremes, on the one side are female judges with half *hijab* (where face is not covered), full *hijab* (face is fully covered and only eyes can be seen) or ones who always wear white clothes even at home. SH (CJ Class-1) said:

I always wear white dress in the court as well as at home. I wear no color and no make-up and no jewelry at all.

MA (CJ Class -111/FJ) who wears half *hijab* said:

I do not like wearing make-up and jewelry in the court and not in home either. In the court I always wear white dress but when I am at home I also wear colored clothes.

RA (CJ Class-111) who wears full *hijab* said:

I feel that *hijab* is no problem in administration of justice in fact it is appreciated in the courts. I have heard this from lady judges in other courts who wear full *hijab* like me and they have experiences as me. In Lahore some of the female judges were without *dupatta* they were criticised by the sessions judge that they should wear a *dupatta*.

On the other side of the extreme are those female judges who wear jeans and do not want to cover their heads either. They justify their view by interpreting the dress code provided by the rules of dress-code for judges.

ABS (CJ Class -11) who was wearing jeans with a smart shirt and without head cover, said:

I wear trousers or jeans and feel more comfortable in it, though I am much criticised in the court. In fact in the official dress code of judges suit is mentioned while *dupatta* is not prescribed, which also means that head cover is not necessary.

Discrimination against Female Judges in the Assignment of Courts:

In some places female judges complained about the discrimination of assigning just the family courts to them. However, most of young female judges interviewed in the present survey have not experienced such discrimination. The reasons are firstly; more senior judges do not feel discriminated as due to their experience they are assigned to all type of courts. Secondly, in some courts where female judges are more in number and due to the work load of cases, such discrimination is not desirable. This is confirmed by RA (CJ Class-111):

There is no discrimination in assigning lady judges to the criminal courts because of the work load.

TB (CJ Class -11) said:

I do not find any discrimination for the assignment of the courts. In my 10 years of experience, I have worked in all types of courts ranging from the family to criminal, revenue and any possible type of cases.

MA (CJ Class -111/FJ) said:

My first appointment was made as a family judge. One and a half years I worked with that. I prefer to work on both civil and criminal cases.

SH (CJ Class-1), a more senior judge, describing her experience in both civil and criminal courts said:

When I am sitting on the seat of judge I do not feel like a woman; I feel like a judge.

However in one of the courts in South Punjab, a female judge had the opposite experience. NR (CJ Class-111) said:

Lady judges are usually not assigned the criminal court but once they are assigned there I think they have better output than the male judges. I love to work in the criminal law court. In the criminal law court, you deal with the liberty of people. You get a wide power of discretion. There are more challenges. You have to decide there and then, and you have to be strong, courageous, confident and blunt. You should not show any hesitancy. I think there should be courses for lady lawyers to increase their understanding of the criminal matters. One reason that lady judges are reluctantly assigned the criminal law courts is that in our society the general norm is that a woman should not interact with the men. In the criminal law court female judges are not only interacting with men but with hardened criminal men (criminal matters include dacoit, physical injury, fights, and theft, etc.).

Another reason why criminal work is not given to us is that male advocates do not find us easily accessible. When women work in branches of law other than family law they come into competition with the male judges.

My experience in the criminal courts is that most of the time it's only a false litigation. In 90% of the cases, compromise outside the court and the task of the court is just to write a statement.

Male-Dominated Profession

The following are expressions of female judges to show their feelings towards a male-dominated profession. MA CJ (Class-111) said:

No, it's no more a male-dominated profession. Males are sitting before us; males are standing before us. They are looking towards us for our decision. We do hundred cases per day. There is a shortage of judges. Male lawyers react. They make complaints. Sessions judges called us and gave hard directions. Lawyers even honour us, and they regard with respect.

Unmarried women have no children and no responsibilities in the house. Women relatively have to work harder to survive in the legal profession. Secondly, the women have no history in the law profession, and they can be considered new to the legal profession as compared to the other professions. They also need to have prior awareness of the environment before joining the profession so as to keep their feet firmly grounded and succeed in the legal profession. The work load in the courts for female judges as compared to men is pretty tough. The environment in the courts is much more uncongenial and unhealthy as women judges are confronted with the male advocates, police men and the litigants who often create unwarranted situations.

TB (CJ Class -11) asserted:

I don't think this is male-dominated profession; we are equal to men judges here. Now a female sessions judge is also going to join us here. Senior judge is like a mother to us.

RA (CJ Class-111) maintained:

We are many lady-judges in the court here and it became a problem for the male advocates and judges to make adjustment with us. A tea party was arranged to create understanding amongst the partners. I think lady judges can resolve the problems in a better way.

Attitude of Male Colleagues:

It should be noted that the attitude of the judges towards advocates is controlled by the Code of conduct.¹²

The following are in the words of female judges with regard to the situations they encounter:

TB (CJ Class -11) stated:

Humanity between us is increased. Colleagues discuss everything with us. As men and women we are not shy of each other. The attitude of the general public is appreciable but sometimes you are harassed by the male lawyer or by yours own senior colleagues at your work place.

MA (CJ Class -111/FJ) asserted:

Male advocates give lot of resistance to the lady judges. It's in fact hard for them, not for us. They are standing and looking up to us they try to create problems that judge has done this and that. They have also gone to the Lahore High Court with complaints that madam is too harsh and strict. I wanted to have short adjournment. I wanted to dispose cases as soon as possible, advocates reacted to it and made complaints against me to the Session Judge. That "she is strict and she is sitting until 6 pm. She has no children she is unmarried and she has no liability. The entire staff is also suffering". I am thankful to the sessions judge who supported me and threw the complaint paper in the dustbin.

ABS (CJ Class -11) complained:

Lawyers use abusive and filthy language if the order passed is not according to their wish. I feel that I am insulted every day. I would have to explain my position before my superiors was too difficult to manage. Lawyers would always say why you have done this and that they would like to have work of their own choice. I have also seen that a junior would always follow their seniors, a lawyer should not make precedence of seeking something unfair.

TB (CJ Class -11) said:

My experience is that a males would like for themselves to be listened to. We should listen to them. They are not always right. I don't see it as a pressure. Some of the advocates are polite and decent while others are rude and indecent; they in fact are portraying themselves through their behavior. Females judges are in fact stricter; they are strict in passing orders.

¹² "His behaviour and conduct should be gentlemanly particularly towards the litigants and lawyers. He should be courteous and polite but firm and dignified to maintain decorum of the Court. His conduct in and out of Court should be exemplary which should enhance the prestige, respectability and honour of the court in the society" 2(3) Revised Code of Conduct for Members of Subordinate Judiciary: Sayed Zahid Hussain, Chief Justice 31-10-2008

When we were less in number, we also became more serious. I appreciate the advocates they should not go unattended.

RR (CJ Class-111) asserted:

Senior male advocates are usually very aggressive. It is difficult for them to see a woman making a decision on the case they are pleading; they can't tolerate that their case is reverted.

Is the Social Circle Very Limited?

The social circle of the judges is limited by rules provided in their code of conduct. On the other hand, keeping in view the legally plural society, a wider social network is indispensable.

ZMM (CJ Class-111) explained the restrictions:

Yes, our social circle is limited and when you step into the judiciary your social circle is constrained by your department, and you are not allowed to attend any private or social gathering. You cannot join clubs, and if you join a club then you have to mention the name and all the details of the club; and you have to send the declaration of your assets. We tend to have a very limited circle. Females' problem is that they cannot even go to parlors easily and freely. We have to maintain our status. We have to be very conscious of where we are going.

RA (CJ Class-111) said:

We do not have many links in society. Our social life is very limited. Our residences should also be separated. People try to approach us outside the court, and we are not approachable. We do not get a separate residence in all cities of our appointment. If we are not living in a segregated, guarded area, we are vulnerable to people who would approach us privately. Moreover we are more trusted than men as women are hardworking, they are honest and generally do not opt for unfair means. We have 4 female civil judges, 1 additional sessions judge, and none of them till date have been alleged with any corruption whatsoever. They are known to be straightforward, as they go by the book only.

Non-accessibility/Non-approachability

The limited social circle of female judges leads towards the issue of non-approachability, (approachability opens the possibility of partiality, bribes and other type of corruption) which is very sensitive issue in Pakistan. Therefore it is repeatedly mentioned in the code of conduct for example "*He should always live within his honest means and believe in Rizq-e-Halal (honest earning, editor's translation).*"¹³ Also a requirement of a judge is "*To be above reproach, and for this purpose to keep his conduct in all things, 'official and private, free from impropriety is expected of a judge.*"¹⁴ This can also be perceived from the directives issued to control the financial gains of judges during their services.¹⁵

¹³ Revised Code of Conduct for Members of Subordinate Judiciary: Sayed Zahid Hussain, Chief Justice 31-10-2008

¹⁴ Code of conduct for judges of the Supreme Court and the High Court Article -111

¹⁵ On behalf of Chief Justice Umar Ata Bandial, the LHC registrar issued notifications directing all district and sessions judges to ensure that they and the staff under their charge submit declarations of their assets by July 31.

NR CJ (Class-111) said:

.... in the sense that they are not accessible in other words lady judges do not mix up and their social network is not that wider that one could easily access them for any favour, etc.

SH (CJ Class-1) explained:

Usually lady judges are not corrupt, and we are not easily approachable. When we do not allow the male advocates to approach us, they get very irritated in turn. There are advantages attached with the lady judges that people don't approach us for bribes.

TB (CJ Class -11) expressed:

Why should we be accessible to advocates? They give service to their client. The main stakeholder is the client. In a particular state of mind, we think over it when the other party is not there. When we have heard the arguments from both sides at the decision making time we should be non-accessible. Yes, of course some people try to interfere with our decision making. Criminals ask for favour. Once my husband was physically hurt. He did not tell anyone about the episode, but he later told me that some criminals hurt him because of the verdict I made in the court. My father is very supportive. Once he was asked by some clients that they would like to explain the case to me in private, but my father refused by saying, "My daughter has become disobedient; since she has become a judge, she does not listen to me.

ZMM (CJ Class-111):

Yes it is correct. Because when sessions judge has passed the directions that for smooth running of the system, male judges can attend to male lawyers, but this access has been denied to the female judges. We are strictly prohibited, and just have to maintain our limits, and nobody will come and sit in our chambers. No male advocates should come to our chambers, but we have extended this to the female lawyers also. So this is a way closed to approach the female judges. Secondly, as females, we don't move in the society very freely, and on the other hand, male judges have contacts with so many other people then they try to approach them. Whether they get approached or not, it is another debate but they are easily accessible, whereas when it comes to females, if I receive a missed call and the person does not tell his name, I just switch off my phone. So the female judges cannot easily be accessed.

Soft Justice

MA (CJ Class -111/FJ) said:

I am not soft. I am a judge as well as a "parents of litigant" I decide the cases on merit. We are here to do paper justice. We don't want that people should suffer.

The registrar said that the D&SJ were told through the notification that in light of amended rules 12(2) of the Punjab Government Servants (Conduct) Rules 1966, they were required to forward a Declaration of Income and Assets for the financial year ending June30 , 2012 (FY 2011-2012), on the prescribed Performa (after filling-in each column according to its scope and spirit), and of all the Judicial Officers (AD&SJ, Senior Civil Judges & Civil Judges) as well as Superintendents, Session Courts, working under their control, showing any increase or decrease in property accrued during the said financial year along with bank statement(s) and other related documentary evidence. By Rana Tanveer
Published: June 26, 2012The Express Tribune with the International Herald Tribune.

TB (CJ Class -11) formulated:

We are considerate and not just soft and lenient. We should not be emotional when making decisions. For example we all know that how necessary dowry is in our society. All parents give dowry to their daughters. Now usually no evidence is kept for the dowry of a daughter. Therefore, in the cases usually evidence is missing, but because I know that in society it is important therefore I tend to be considerate in such cases. I also discuss tradition and customs with clients in the court. In a criminal case, on the one hand, there could be habitual criminal with a big theft while on the other hand there could be a small theft, for example an instance of cycle lifting. By looking at the personality of the person, we can see that he is not a habitual criminal and if he goes to prison for three years, he would be more spoiled. I am considerate in this situation as well.

RR (CJ Class-111) like others she reacted against the words ‘soft justice’:

I would rather use the word “humane” instead of soft. I am very considerate and give time to reconcile in family cases. I go for an agreed compromise in both criminal as well as civil cases.

ZMM (CJ Class-111) emphasised:

Women have a soft corner in their hearts and they are not hard in their judgments and is more inclined to give relief. But there is an opposite impression in our society that female judges do not give relief whereas the male judges are considered to be more willing to give relief. What to do when the appeal, suit or their application is not maintainable under the laws but to dismiss and pass harsh orders? Women are more human. We don’t have a soft corner even towards the female litigants. People use middle ways to get their work done. People are coming there on a daily basis, and we know that bribes are given to the staff and the clerks (*munshi*) of the advocates. We are soft in the sense that we are just, but we have no soft corners to do injustice. Bribes are a burden on the clients. It is said that even the walls of the courts demand money (*kachehri ki diwarein bhi paisay mangti hein*). From the cycle stand to the reader sitting and the advocate and his clerk, everyone demands money.

MA (CJ Class-111) was of the opinion:

I am not soft. I am a judge. I used to say that I am like a parent to litigants. I have to decide between parties as between two of my children who are both dear to me. It’s a kind of great responsibility when you have to adjudicate between two children. There is or may be softness, but I try to decide the case on merits. I will not decide the cases by looking at people even though they are looking innocent on their faces. You can say we are doing ‘paper justice’. I have to decide on what’s there in the files. Softness is in the sense of delivering justice and not making people suffer. And if the litigants are present in the court, I prefer that they should record their evidence; then I proceed and get their counsels in the court. Afterwards I go through the files again and again and my soft corner is in the sense of providing speedy justice.

Female Judges: Impact on the System of Justice:

Whether female judges have a positive influence on the system of justice is may be too early to assess and draw any conclusion. However, we have discerned some visible influences which females have made on the legal profession. Some of the influences that can be named are the following:

Female judges have more understanding of female clients:

NR (CJ Class-111) said:

First and foremost they can understand women's problems better than a male judge can do. They can share and help in family problems more than a man. Sometimes women show signs of violence on their bodies to us, which they would not do before a male judge, and recently the dissolution of marriages cases are on the increase. The reason for the increased trend of dissolution is the sense of sacrifice is diminishing and materialistic approach towards life is on the rise.

Another TB (CJ Class -11) said:

Moreover women litigants have become more confident and confide their problems in us. Once there was case of a woman who murdered her husband. She told me many things which a woman would not tell a male judge. The judge enjoys the social status of parents to their clients.

It seems that female judges have more understanding of family matters, and they make more efforts for mediation. This is also prescribed in Code of Conduct 2(34) for the members of the subordinate judiciary, "*He (she) should make endeavour as far as possible to act as "musleh" and help the parties to resolve the dispute through amicable means acceptable to them, without leaving any impression of siding with anyone.*"

NR (CJ Class-111) said:

In the family cases, I try to do mediation between the parties. Especially in the cases where there are children. I try to make parties think about the children and make compromises. Sometimes when you are trying to reconcile, you feel that clients come with a rigid mind, but women who come from good, educated families, they are more flexible. Usually when women come to the court, they are very desperate, and they are not flexible and come with fully prepared for separation and divorce. Usually it's very difficult to prepare them for compromise. Men are more flexible and want compromise. When a man feels that he would lose his respect (*naak kut jai gi*) and would be disgraced and dishonoured in the society, therefore he wants compromise and would be ready for negotiating terms and conditions. Their ego is broken. From the very beginning, within a glance we can see if a woman is ready to compromise. Most of the cases in family matters are run-away-bride cases of abduction and rape.

Another SH (CJ Class-1) said

As a lady judge I have more understanding of family matters. Whatever few family matters I get, I deal with them with understanding. I am strict with divorce cases. But once a divorce case has come up in the courts, it is difficult to make compromises between the parties. Due to one or the other reason they are not ready to accept any conditions. The laws of our country have also made divorce very easy.

Most of the family law cases are of exchange marriages. If one family in the exchange marriage is divorced there is pressure on the other family of exchange to be divorced too. They may be living happily and may not want divorce but there is family pressure and sometime also pressure of the *panchayat* (traditional institution to resolve disputes).

Some of the cases from the rural areas consist of pure revenge. We can only make limited efforts for reconciliation between the parties. If we take too much interest, we may be accused of taking too much side of a particular party.

It also seems that female judges are keener to learn the local customs and traditions of the place where they are appointed. The purpose seems to be to help integrate this in their judgment.

SH (CJ Class-1) said:

I am more conscious of the local customary practices, and I keep them in mind while making judgments. For example, in the South Punjab very high dower is fixed for woman for example a house, land, and hand pump are common items in dower, and there are early marriages.

My husband who is also a civil judge come from this area and speaks the Saraiki language. I do not speak the language but understand it.

ABS (CJ Class -11) said:

We are hard-working and make speedy disposals of justice. We are not approachable. I try to mediate among the couples. It's the children who suffer if the family is divorced. In the cases of honour, I think murder is murder. Judges are part of society. They make judgments according to how they are and with what type of ideas they are brought up. Judges should not have biases. They should have training for these matters.

TB (CJ Class -11)

For dispensing justice, it is important that one should know people and their customs. For example, now when we are working in South Punjab, there are exchange marriages. In Lahore there is no such tradition. Cases are very simple and direct. Now in exchange marriages there are two connected families. In both families the girls are treated equally; if one family is richer, the less rich family would try to keep the girl to a more or less similar standard as the rich one. One couple may be more compatible than the other couple. We have to keep all these things in mind when making decisions.

Another example, in the South Punjab we should be aware of is the existence of *panchayats*. This does not happen in Lahore. Here due weight should be given to the existence of *panchayats*. People also sit in the mosque and resolve disputes through mediation. Our law also allows us to acknowledge these mediations. When the decisions are made outside the courts, we just have to pass decrees from the court. Traditions in fact carry the force of law.

One more example is from the law of inheritance. According to this all property goes to the eldest son. This custom still exists. We also have our own limits. We can use our discretion only to a certain extent and must give consideration to the local customs and traditions. For the cases of inheritance, we also have to give consideration to different sects in Islam. The Shia sect should have their rules of inheritance. Usually there is reluctance to give landed property to women, so all of it is taken by the brothers showing that sisters have given up their share to them. If we have doubts, we make sure that the free consent of the sisters was given without any pressure from the brothers. If we are suspicious that it has not been given freely and there is no tradition/custom of compensating women in the area, then we can give a strict decision in favor of sisters.

One of the judges had an interesting comment showing their influence on the coming generation. She said:

TB (CJ Class -11)

Before people did not think that law is a profession for their daughters, but now they have started thinking of selecting this profession for their daughters. I think decision making power is a blessing. It is not awarded to women in our society even in small family matters; whereas it is a big thing that this decision making power is awarded to the lady judges.

I would like to end with Rule 37 of Code of Conduct, which says:
One should never forget that he/she is accountable to God Almighty in the end.¹⁶

¹⁶ Revised Code of Conduct for Members of Subordinate Judiciary: Sayed Zahid Hussain, Chief Justice 31-10-2008

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