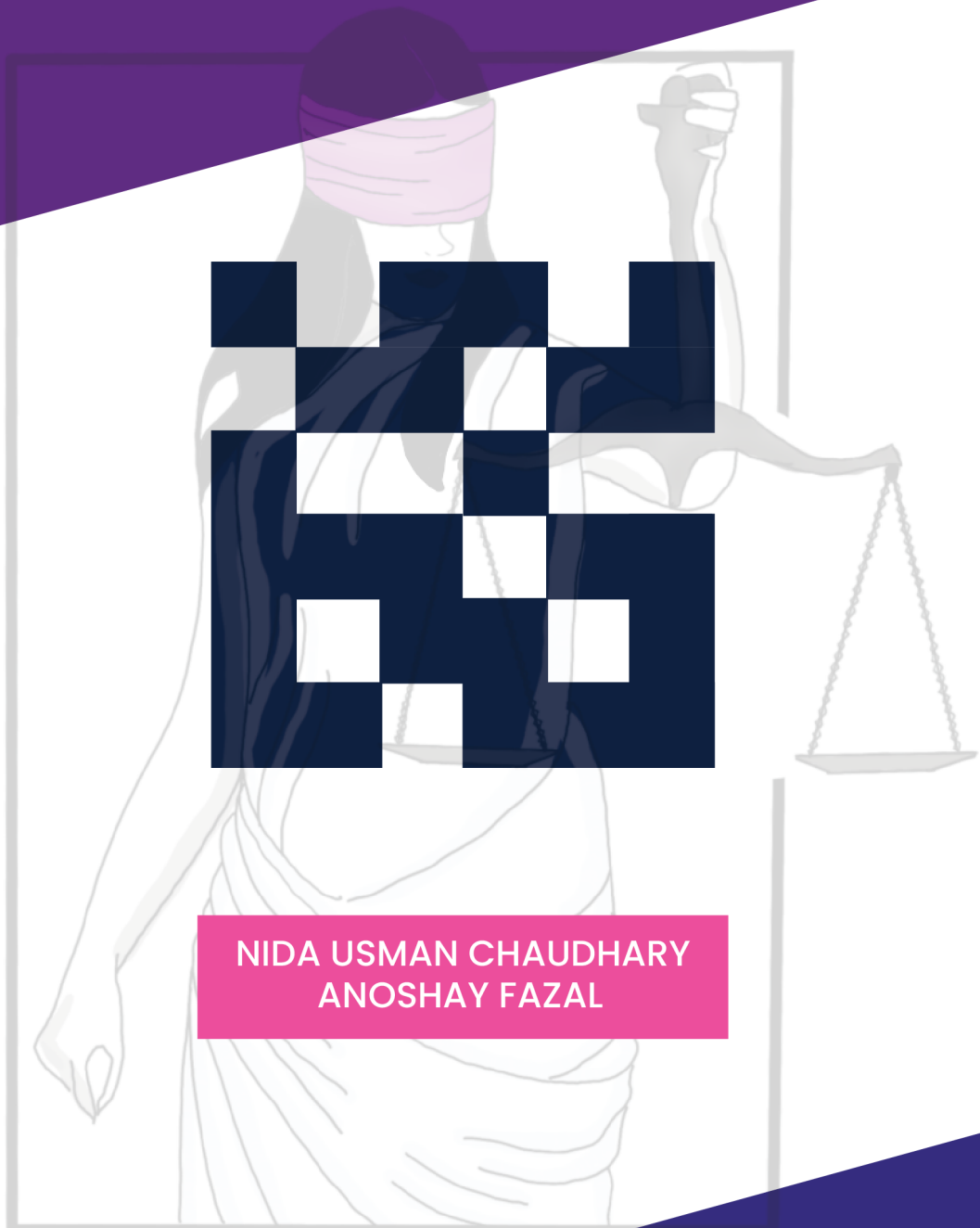


FAIR REPRESENTATION IN JUSTICE SECTOR

An Inter-Disciplinary Gap Analysis Study of
the Recruitments and Appointments in the
Justice Sector with a Gender Lens



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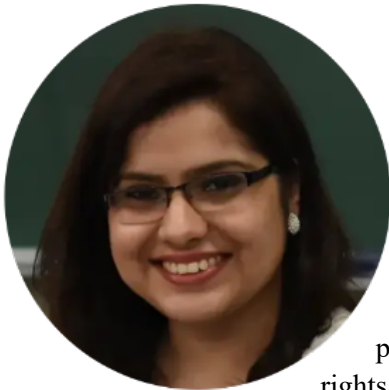
The data has been obtained from official sources including official websites, official correspondence, surveys, interviews, and communication with concerned officials, participants, and stakeholders, as well as official publications such as directories, reported judgments, and other published secondary sources such as articles, op-eds, research papers, and studies. The sources and the time at which the information was obtained have been cited in the report along with the data. Any limitations have also been highlighted where applicable.

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This study is an extensive interdisciplinary exploration of the disparity in terms of gender in the recruitments and appointments in the justice sector in Pakistan in sectors including the Judiciary, the Bar Councils, Law Firms, and Chambers as well as the Prosecution Service. As such the sheer extent and depth of the research required support from several stakeholders, officials, colleagues, partners, and participants. We are grateful for their contribution and input at many different stages of this study. In particular, we would like to acknowledge the support of female lawyers from the Women in Law Initiative who helped us connect to the respondents and collect the surveys and the interviews. In this regard, we are indebted to the support extended by Advocate Sameen Sheikh in Rawalpindi and Zainab Iqbal from Islamabad. In Multan, we were supported by Mr. Hadi Ali for the dissemination of surveys. We also acknowledge the support of Noor Zafar in developing and conducting the surveys.

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This work also draws on the years of experience that the authors have as part of the Women in Law Initiative and the various opportunities to explore the issue of increasing women's representation in law through that platform. That experience is the result of shared and collective input for which we are indebted to all the members of Women in Law and its partners in various prior but similar endeavors.

Last but not the least, this work is a tribute to Dr. Rubina Saigol (late) who had been a guide and mentor in all these years. Whatever we know about writing is because of her.

Abbreviations

AGHS	Asma Jahangir Law Associates
ASC	Advocate Supreme Court
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CNIC	Computerized National Identity Card
COTR	Contracting Officer Technical Representative
CPD	Continuing Professional Development
CSS	Central Superior Service
DBA	District Bar Association
DPP	District Public Prosecutor
GBV	Gender Based Violence
HC	High Court
HR	Human Resource
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ICT	Islamabad Capital Territory
JAC	Judicial Appointments Commission
JCP/JC	Judicial Commission of Pakistan
KP	Khyber Pakhtunkhwa
LLP	Limited Liability Partnership
LSB	Legal Services Board
MOLJ	Federal Ministry of Law and Justice
NCSW	National Commission on Status of Women
PC	Parliamentary Committee
PCSW	Punjab Commission on Status of Women
PI	Principal Investigator
PPP	Pakistan People's Party
PPSC	Punjab Public Service Commission
PTI	Pakistan Tehreek e Insaaf
RO	Returning Officer
SC	Supreme Court
SDGS	Sustainable Development Goals
SECP	Securities and Exchange Commission of Pakistan
SRA	Solicitors Regulation Authority
TLS	The Law Society
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
USIP	United States Institute of Peace

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Executive Summary

Women of the sub-continent have been striving for rights and representation since before the partition. In the Round Table Conferences of the 1930s, they called for 10% reserved seats for women in the assemblies, however, even by 1954, at the final meeting of the constituent assembly, (where a draft bill for the Charter of Women's Rights was prepared by one of the only two female members of the legislature at that time, Ms. Jahanara Shahnawaz was also discussed) the reserved seats for women remained at only 3%. Even today, only 20% of seats of the National Assembly are held by women,¹ of which 18% are on reserved seats while only 2% women have been elected on general seats.

The international human rights regime recognizes women's right to participate fully in public life, including in the justice sector. Literature and studies from across the world indicate that the inclusion and increased representation of women in the justice sector can translate into sensitized and therefore, accessible judicial and political institutions, which means better access to justice and delivery in line with the rule of law.

The women in Pakistan constitute 49% of the population and yet their representation in decision-making, policy, and leadership roles is inconsequential.² In the context of the justice sector and broader goals of gender equality, this means that few women can advance in the profession to a point where they can have both, a seat as well as a voice at the table to make an impact. In Pakistan, women remain starkly underrepresented in all branches of the justice sector (judiciary, bar councils, prosecution, and senior positions in law firms), making the system, not just non-representative, but also inaccessible and unjust.

Women account for a mere 5.5% of the senior judiciary, with the first female judge to the Supreme Court of Pakistan appointed in January 2022 only. Similarly, no female has ever served as Attorney-General for Pakistan.³ The representation of women in the bar councils and prosecution service also remains negligible with a total of 4 women out of 205 members of the eight-bar councils in Pakistan including the bars in Azad Jammu and Kashmir and Gilgit Baltistan, and 178 female prosecutors in comparison to 880 male prosecutors in Punjab.⁴

This persisting disparity has various impacts on not just women in the justice sector but has broader implications for rule of law and access to justice. One of the most significant implications of this glaring disparity in representation is that women's lived experiences, peculiar circumstances, and differing needs and approaches often do not get reflected in the ensuing policies, judgments, and operations of these institutions which can impact not just the women in law, but also those litigants who approach the courts. As a result, the missing gender lens leads to the creation of a sort of environment, laws, and policies that are likely not based on holistic, participatory, enabling, and inclusive measures and which perpetuate the existing disparities by reproducing the inequities in the system.

¹ The World Bank, 'Proportion of Seats held by Women in National Parliaments', (data.worldbank.org/indicator) <<https://data.worldbank.org/indicator/SG.GEN.PARL.ZS?locations=PK>> accessed 12 January 2022

²The World Bank, 'Population, female (% of total population) – Pakistan', (data.worldbank.org/indicator) <<https://data.worldbank.org/indicator/SP.POP.TOTL.FE.ZS?locations=PK>> accessed 12 January 2022

³ Office of the Attorney General for Pakistan, 'Our Attorney Generals', (<https://www.agfp.gov.pk>) <<https://www.agfp.gov.pk/attorney-general/appointments-tenure/>> accessed 15 January 2022.

⁴ Interview with Prosecutor General Punjab, Office of Prosecutor General (Lahore, 15 November 2021)

Any attempts towards addressing the gender imbalance in the justice sector should focus on policies and mechanisms needed to achieve fairer representation of women in the justice sector. The framing of such policy mechanisms requires a deeper understanding of the entire system. A closer look at the process of recruitment and nominations is necessary to find out the practical gaps, latent biases, and systemic or other obstructions in the way of women's progression in this field.

Therefore, this study was conducted in three major cities of the province of Punjab in Pakistan namely, Multan, Lahore, and Rawalpindi from October to December 2021, to identify the legal, socio-cultural, and practical constraints in women's entry and advancement in select sectors of Justice including the Judiciary, the Bar Councils, Law Firms and the Prosecution Service.

This study has aimed to uncover the legal gaps as well as structural and invisible barriers to women's fair representation in the justice sector in Pakistan. The approach to this research has been socio-legal and inter-disciplinary. The findings are based on both primary and secondary research.

It begins with the international and domestic historical framework and conceptual exploration of what fair representation means in the context of the justice sector. The primary research compiled through surveys, interviews, focus group discussions and participatory observations has been an eye-opener in identifying the 'hidden barriers' and 'inherent biases' that prevent women from achieving fair representation in the justice sector.

In drawing analysis and understanding from a combination of primary and secondary resources, the authors have identified several problematic legal and structural gaps that significantly hinder women's participation in the justice sector.

For instance, within the judiciary, there is no basic quota reserved for women judges and neither is there one for representation of women in bar councils. Furthermore, there is as yet no affirmative requirement for women to be represented in the Judicial Commission of Pakistan either, which is one of the central constitutional bodies concerned with appointments of judges in the superior courts.

In addition to that, the study identifies the challenges associated with the 'regulatory capture' of bar councils due to the absence of a clear separation between their regulatory and representative roles. It also explores how this may impact women's representation in bar councils and hinder fostering a safe and enabling work environment.

Prosecution service stood out as a career path that respondents had the least information and awareness about. Given the rising instances of violence against women and the central role of prosecution service in prosecuting criminal cases, it is perplexing that the majority of female law students and graduates are still discouraged from pursuing criminal law as an area of practice.

Lastly, the law firms and chambers lack regulation and are generally dominated by men in leadership roles. We found that there are significant perception biases related to women who join law firms that arise from the stereotypical notions associated with their gender and the larger concerns over the potential lack of women's agency over their decisions post marriage.

The primary research conducted through interviews and surveys also highlighted several structural and hidden barriers that prevent women from equal participation. These include the lack of equal opportunity, safe working environment, lack of flexible working conditions, nepotism, arbitrariness

in appointments, advancement, and recruitment, and a generally dismissive attitude towards female lawyers pursuing active legal practice.

In addition, the lack of female role models in leadership roles was also cited as one of the prominent factors dissuading women from applying or competing for similar roles. However, we understand that symbolic representation is not sufficient for the processes to become inclusive. In Pakistan's chequered history, there have been instances of individual women achieving milestones without taking away from the strength and success of individual achievements which in their own right have been inspirational, they, however, have not translated into systemic and structural reforms. It has largely been the collective actions of women and rights activists that have challenged the system and powers that be on various occasions that have made reforms possible.

The study concludes with recommendations shared by the respondents as well as the policy recommendations of the authors based on the research and experience in the field. Of these, the most significant is the need for a paradigm shift and an across-the-board commitment to diversity and inclusion as the underlying objective among all stakeholders, relevant institutions, and figures of authority in the justice sector so that all reforms, processes, and developments are approached from the lens of gender diversity and inclusion.

Ultimately, it is the consistent and concerted engagement and organized actions at multiple levels by all concerned stakeholders that shall lead to transformative, sustainable, structural, and systemic reforms for fair representation in the justice sector.

Research Methodology

This study has employed a socio-legal theoretical approach to analysing the theoretical, structural, and societal underpinnings that contribute to gender disparity within the justice sector in Pakistan. The team undertook both primary and secondary research, with a comparative lens, to understand the causes of this disparity.

Primary Research

Primary research conducted for this study comprises four major methods for data collection, namely: surveys, interviews, focus group discussions, and participatory observations. The geographical focus for the primary research has been across three major cities in Punjab, Lahore, Multan, and Rawalpindi/Islamabad.

Quantitative Research

1. Surveys and Interviews

The survey was designed to gain a comprehensive understanding of the socio, legal and other gaps in the recruitments and appointments process in the justice sector. To this end, the survey encompassed targeted questions on the apprehensions and expectations of female lawyers, law students, and the legal community; the factors that they identified as ‘gaps’ and/or the structural or other biases that may cause hindrance to fair representation in key sectors. The survey’s target group net was also cast quite widely and included responses from female lawyers, law students, bar council members, women at partner positions in law firms, members of the legal community including male respondents and those who are in academia or other non-practicing roles and other key stakeholders in the justice sector. The principal investigator and research team were successful in securing responses by 101 participants to these surveys (both through online and offline channels).



Of these, 68% of students were enrolled in local degree programs while 32% were pursuing a foreign LLB degree. 80% of the female lawyers and members of the legal community were advocates of the High Court. 30% of the members of the legal community were from Multan and Rawalpindi respectively, while 40% were from Lahore. Law students were in majority from Rawalpindi while 44% of female lawyers were from Lahore, 28% from Multan, and around 28% from Rawalpindi and Islamabad. The respondents were all predominantly of Punjabi ethnicity however, there was representation from Saraiki, Pushtoon, Kashmiri, and other ethnicities as well. The majority of the respondents fell into the age bracket ranging between 26-35 years while around 17% of the respondents stated that they were differently-abled. Around 90% of the respondents belonged to the majority Sunni Muslim faith while around 10% identified themselves as Shia. No person from other faiths responded to the survey.

To further supplement this data, the principal investigator (PI) and research associate (RA) also conducted a set of interviews with members of the legal community including men, law firm owners, members of the bar councils, and the Prosecutor General Punjab.

2. Focus Group Discussions

Two focus group discussions were conducted for this study. The first discussion was conducted in Rawalpindi on 23rd November 2021 in the District Bar Room and had 12 female lawyers as participants. The second consultation was conducted online on 5th January 2022 to discuss judicial appointments in the justice sector through a gendered lens and was attended by a total of 8-10 participants from the legal community. These discussions aimed to gauge specific hurdles about judicial appointments for women and the broader barriers that exist for women in the workplace (including law firms, bar councils, and subordinate courts) within the justice sector.

3. Participatory Observations

The principal investigator and research team have a formal training and academic background in law and have therefore, engaged with diverse groups and key stakeholders within the justice sector. The PI, as the founder of Women in Law Initiative Pakistan and the RA, as a member of the same, were able to observe, gain insight and first-hand exposure to the various types of hurdles and barriers that exist in different professions within the justice sector in Pakistan. Their own experience, prior studies, and engagement with these issues through their initiative further supplemented the primary research for this study significantly.

Qualitative Research

Desk Review

The secondary research for this study comprises a comprehensive analysis and review of existing resources including (but not limited to), international legal instruments, regional frameworks, national laws, and policies regarding the rights of women and the justice sector. This desk review builds on the primary research conducted through surveys, interviews, and focus groups to compile a detailed study on the various forms of barriers, discriminatory behaviour/practices, and biases that exist within justice sector across different regions and jurisdictions. This ensuing thorough understanding based on a wide-ranging study has enabled the authors to enumerate key findings that go beyond legal and

procedural loopholes and therefore, allowed in the development of targeted policy recommendations to overcome the barriers that prevent equal participation of women in the justice sector.

Source(s) of Information

The sources of information about the recruitment, appointment, and eligibility requirements for posts in the justice sector used for this study are as follows:

- i. Constitution of Pakistan 1973, particularly Articles 175-A, 177, and 193 that talks about the appointment of judges in superior courts as well as the Articles on Fundamental Rights and Principles of Policy.
- ii. Provincial Judicial Service Rules 1994 that are concerned with recruitment and promotion of subordinate judiciary.
- iii. Legal Practitioners and Bar Councils Act 1973 and Rules 1976 that talk about the eligibility of candidates to stand for bar elections as well as about qualifications of Advocates and their enrolment for legal practice.
- iv. Provincial laws for appointment of public prosecutors.
- v. Partnership Act 1932 deals with the registration of firms.
- vi. Relevant Case Laws, Rules, Notifications, Lists, Studies, Institutional Orders/Practices, Official Advertisements in press inviting applications for public positions.

International Legal Instruments and Standards

- i. The Universal Declaration of Human Rights
- ii. International Covenant on Civil and Political Rights (ICCPR)
- iii. International Covenant on Economic, Social and Cultural Rights (ICESCR)
- iv. Convention on the Elimination of Discrimination against Women (CEDAW)
- v. UN Basic Principles on Independence of the Judiciary
- vi. The Beijing Declaration and Platform for Action
- vii. Bangkok General Guidance for Judges on Applying a Gender Perspective in Southeast Asia
- viii. Sustainable Development Goals (5 and 16)
- ix. Committee on the Elimination of All Forms of Discrimination against Women: General Recommendation No. 33 on Women's access to Justice
- x. European Standards on the Independence of the Judiciary, developed by the European Commission for Democracy through Law

In addition to the international instruments, comparative laws, processes, and practices of different countries, including the UK have been discussed where required.

Limitations

One of the limitations that we encountered was that the primary data was collected mainly through surveys, some of the responses by participants were provided in bullet form and therefore, did not accumulate very informative feedback.

Secondly, due to a lack of extant literature and data on the subject, some data for both domestic and comparative jurisdictions has been derived from official websites and online news platforms, which may or may not have been updated. However, all resources used have been properly cited.

Research Ethics

This study has employed a socio-legal approach through primary and secondary research in identifying the current situation, barriers, and limitations to fair representation in the justice sector.

Interviews and surveys formed an integral part of this study and therefore, involved individuals; the PI and research team developed the surveys and interview questions following the standard research ethics (confidentiality, informed consent, honesty, maintaining anonymity, and keeping subjects from harm). The data was collected after seeking informed consent from the survey participants. The authors have maintained the anonymity of survey participants and interviewees, where requested. The authors also understand the need to maintain confidentiality and have recorded and stored this data on safe electronic devices and have used it primarily for informing this research study. Lastly, the authors have presented all information honestly and without bias. All secondary resources used have been properly referenced throughout the study.

Furthermore, a separate undertaking and consent form, covering all the above-mentioned research ethics and principles, was also sent to and signed by all interviewees. All the survey participants and interviewees were given the option to stay anonymous. The privacy of all the participants' personal information has been respectfully maintained throughout this project.

In light of the thematic area of this project, the PI and research team encouraged the participation of lawyers from all socioeconomic classes, religions, or ethnicities. As the study has focused on the issues faced by female lawyers/female law students in gaining fair representation in the justice sector, they formed the larger block of participants for the primary research however, the input and views of male lawyers, institutional stakeholders and representatives were also actively sought and included for a holistic and objective analysis.

The authors have attempted to articulately highlight not only the apparent legal lacunae but also various other hidden, systemic, or structural barriers that are faced by women in accessing parity in the justice sector. The report has listed legal gaps, findings from primary research, and lessons and practices from comparative jurisdictions to develop a broad understanding of deeply rooted issues. This study aims to inform and initiate much-needed legal and social reform and capacity-building that can ensure fair representation in the justice sector.

Overview

This primary research for the study was conducted between October 2021 to January 2022 in three major cities of the province of Punjab, namely, Multan, Lahore, and Rawalpindi, intending to identify the legal, socio-cultural, and practical constraints in women's entry and advancement in the justice sector including, the Judiciary, the Bar Councils, Law Firms and the Prosecution Service. In doing so it considered the rules, policies, laws, and practices of the recruitment and appointments process in these sectors through primary and secondary research intending to highlight not just the legal and constitutional gaps but also the structural and invisible barriers that may hinder women's representation and advancement in the field.

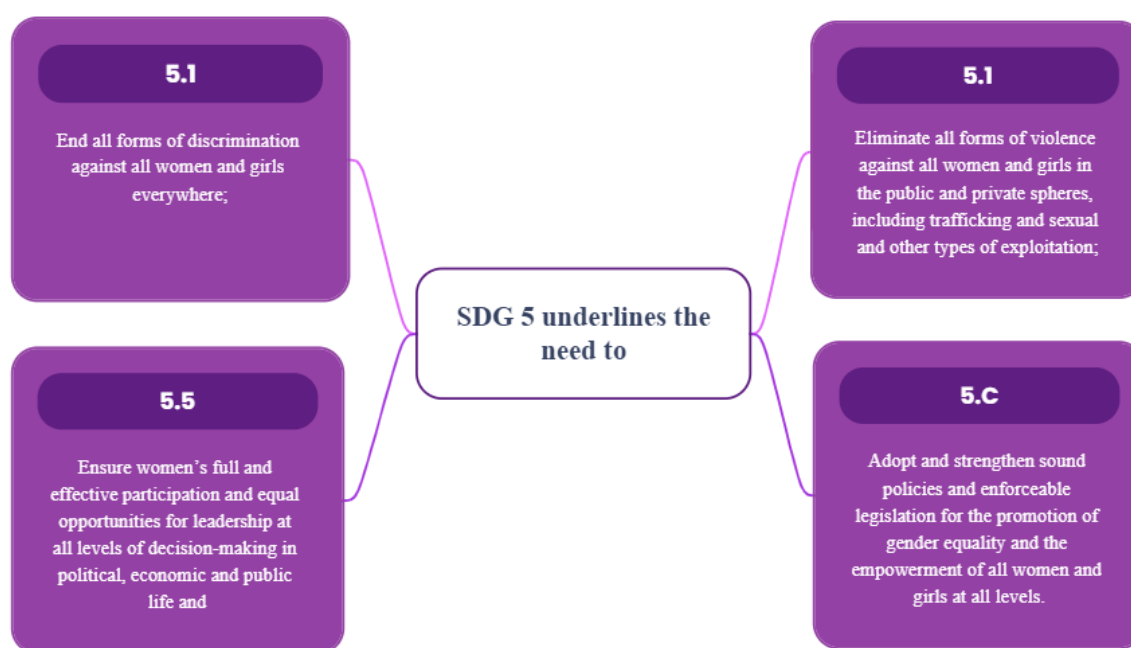
These assessments are based on the overarching framework of Pakistan's existing international and domestic obligations as well as on the perceptions, challenges, and expectations of the stakeholders, including the experiences of female law students, female lawyers, members of the legal community, and other institutional stakeholders.

We begin with an overview of the international and domestic obligations of Pakistan toward gender parity and the historical framework of its society.

International Obligations

Pakistan is a signatory to several international human rights conventions that set out obligations specifically for women's human rights, non-discrimination, and gender equality; including the International Covenant on Economic Social and Cultural Rights (ICESCR),⁵ International Covenant on Civil and Political Rights (ICCPR),⁶ Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW),⁷ the Beijing Platform for Action⁸ and the Sustainable Development Goals (SDGs).⁹ The conventions and forums require that State parties eliminate hurdles for and discrimination against women to ensure equal access to public life – a right that is also recognized under Articles 25 and 34 of the Constitution of Pakistan 1973.

The need for gender parity and the empowerment of women and girls has also been most recently reiterated through the 2030 Agenda for Sustainable Development.¹⁰ Sustainable Development Goal (SDG) number five states the need to, 'achieve gender equality and empower all women and girls.'¹¹



⁵ International Covenant on Economic Social and Cultural Rights, (United Nations Human Rights Officer of the High Commissioner) <<https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>>

⁶ International Covenant on Civil and Political Rights, (United Nations Human Rights Officer of the High Commissioner) <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

⁷ Convention on the Elimination of all form of Discrimination against Women, (United Nations) <<https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>>

⁸ Beijing Declaration and Platform for Action (United Nations Fourth World Conference on Women) 1995 <<https://www.un-documents.net/beijingd.htm>>

⁹ Sustainable Development Goals, (United Nations Department of Economic and Social Affairs) <<https://sdgs.un.org/goals>>

¹⁰ 'Transforming Our World: the 2030 Agenda for Sustainable Development', (United Nations Department of Economic and Social Affairs) <<https://sdgs.un.org/2030agenda>>

¹¹ Ibid

Similarly, SDG 16 (Peace, justice, and Strong institutions) calls to:

*'Promote peaceful and inclusive societies for sustainable development, provide access to justice for all, and build effective, accountable, and inclusive institutions at all levels.'*¹²

In July 2015, the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted General Recommendation No. 33 on Women's access to justice.¹³ The General recommendation underlines the importance of access to justice in ensuring gender equality for women. The General Recommendation is an important instrument in highlighting the intersection of key areas with access to justice, including 'justiciability, availability, accessibility, good quality justice systems, effective remedies, and accountability.'¹⁴

Furthermore, the General Recommendation specifically refers to the need for State parties to address discriminatory laws and processes and to ensure that justice systems are 'efficient, independent, and impartial; provide effective remedies that are gender-sensitive; and protect women's privacy, safety, and other rights, in a way that is consistent with due process.'¹⁵ Pertinently, the General Recommendation also highlights the need to address gender stereotyping in the justice systems and emphasizes raising awareness and providing capacity-building opportunities to judges regarding CEDAW and the prohibition of discrimination against women.¹⁶

In a recently published policy brief by UN Women Pakistan, the gendered implications of the Covid-19 crisis in light of Pakistan were highlighted drawing attention to the unique and peculiar challenges that women face during times of crisis and conflict because of their gender. Women were for instance more likely to lose jobs, have the burden of increased unpaid care-work as a result of school and work closures, and were likely to suffer greater instances of gender-based violence at home in event of lockdowns especially when support services in times of such crisis are disrupted or are inaccessible.¹⁷

The UN Secretary-General Antonio Guterres highlighted the danger of the limited gains in gender equality and women's rights made over decades at risk of being rolled back due to the covid-19 pandemic. Since the impact of the COVID-19 pandemic is not gender-neutral, therefore, we must not be gender blind in our responses to the pandemic, or else women will carry a disproportionately higher social and economic cost than men which will deepen the pre-existing inequalities and in turn amplify

¹² Sustainable Development Goal 16, 'Peace, Justice and Strong Institutions', (*The Global Goals for Sustainable Development*) <<https://www.globalgoals.org/16-peace-justice-and-strong-institutions>> accessed 29 December 2021

¹³ CEDAW Committee (2015a): General recommendation No. 33 on Women's Access to Justice. CEDAW/C/GC/33, (*Office of the United Nations High Commissioner for Human Rights*) <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/33&Lang=en>

¹⁴ 'CEDAW Committee Issues Key General Recommendation on Women's Access to Justice', International Justice Resource Center (10 September 2015), <<https://ijrcenter.org/2015/09/10/cedaw-committee-issues-key-general-recommendation-on-womens-access-to-justice/>>

¹⁵ Ibid

¹⁶ Ibid ("The Committee made several suggestions concerning stereotyping, gender bias, and capacity building, including: raising awareness about stereotyping, particularly in gender-based violence cases; engaging health professionals and social workers in capacity building programs; and providing capacity building to judges, prosecutors, lawyers, and law enforcement officials regarding CEDAW, the CEDAW Committee's jurisprudence, and the application of legislation prohibiting discrimination against women.")

¹⁷ 'Gendered Impact and Implications of Covid19 in Pakistan', (2020) NCSW, Ministry of Human Rights, UN Women Pakistan <<https://asiapacific.unwomen.org/sites/default/files/Field%20Office%20ESEAsia/Docs/Publications/2020/04/pk-Gendered-Impact-and-Implications-of-COVID.pdf>>

its impacts on the lives of women and girls. Given that 2020 marked the 25th anniversary of the Beijing Platform for action on women's rights and gender equality, we must not lose sight of the gendered implications of the Covid-19 crisis in our response and relief regarding this pandemic. To achieve this, we must put women and girls at the centre of efforts by governments to recover from Covid-19 as urged by the UN Secretary-General, 'That starts with women as leaders, with equal representation and decision-making power.' he added.

A combined reading of Pakistan's international commitments underscores the need for States to implement gender parity, transparency, and inclusivity in decision-making, and national institutions, work towards protecting fundamental freedoms, and promote non-discriminatory practices. This requirement has a strong connection to the inclusivity, participation, and representation of women in the legal sector, be it as solicitors, practitioners, prosecutors, judges, or as victims/litigants seeking access to justice.

Domestic Framework

Although Pakistan was established as an independent country in the year 1947, most of the law developed by the British and the institutions they had set up to dispense justice has remained on the books. To date, it continues to be applicable even though parts of it have been amended in subsequent years.¹⁸

In addition to the English common law system, the Islamic injunctions and Sharia made several inroads, both in substantive laws, constitutional provisions, objectives resolution, as well as in the establishment of constitutional institutions and bodies such as the Federal Shariat Court and the Council of Islamic Ideology in the legal system and laws of Pakistan.¹⁹ As a result, Pakistan's laws, constitution, and the legal system is a layered blend of the Islamic and the English system.

The interjections by military dictators over four times in 74 years further weakened the democratic institutions and the processes. In addition to that, the idea of a separate homeland for Muslims before partition cemented the role of religion in politics.²⁰ That is why the contestation between women and the religious lobby had begun to emerge as early as the first Constituent Assembly of Pakistan which had several special committees in which Jahanara Shah Nawaz and Shaista Ikramullah countered male chauvinists and religious *ulema*. For instance, in the Zakat committee, the *ulema* refused to sit with women members, arguing that only *burqa-clad* women above the age of fifty should be allowed to sit in the Assembly, a demand that was to be raised again by the Ansari Commission in the decade of the 1980s when the country was under military rule. As Saigol explains:

'In the period of General Zia (1977-1988), the entire legal structure was reconstructed to institutionalize discrimination against women and non-Muslim citizens. Several discriminatory laws including the Hudood Ordinances of 1979, the Qisas and Diyat Ordinance, and the Law of Evidence of 1984 were promulgated. The Zina Ordinance conflated rape and adultery and women who reported rape but were unable to produce four adult male Muslims of good character as witnesses, were booked for adultery and jailed. A large number of poor and rural women languished in jails for years for being unable to fulfil the impossible requirement of witnesses. The Qisas and Diyat law privatized the crime of murder and saved the perpetrators of 'honor killing'

¹⁸ See, for instance, Criminal Procedure Code, 1898, Civil Procedure Code, 1908, The Prisons Act, 1894, The Prisoners Act, 1900, Child Marriage Restraint Act, 1929 etc.

¹⁹ Articles 2A, 203C and 230 of the Constitution of Pakistan, 1973 <<http://www.pakistani.org/pakistan/constitution/part1.html>> accessed 25 January 2022

²⁰ Rubina Saigol, *The Pakistan Project*, (1st ed, Women Unlimited 2013) 10

who could pay the blood money and go scot-free. The Law of Evidence reduced women's testimony in a court of law to half that of men. In 1983, the Ansari Report of the Council of Islamic Ideology recommended that women's participation in politics should be limited to nominated women over the age of fifty. In 1985, the Shariat Bill (9th Amendment) threatened to abolish the Family Laws Ordinance of 1961.²¹ It is therefore no surprise that some of the earliest struggles from a gender lens, came just a year into the independence in the shape of women demanding their right to inherit property. This was followed by attempts to secure women's political participation, reserved seats in assemblies, and equality of status, opportunities, and pay.²²

In the 1956 Constitution, the principle of female suffrage for women's reserved seats was accepted based on special women's territorial constituencies, thus giving dual voting rights to women for both general and reserved women's seats.²³

The 1973 constitution, which is the main governing law of the country, was unanimously ratified in the Assembly.²⁴ It set up the justice sector, the legal system, and the public institutions that make up the justice sector in Pakistan today. The 1973 Constitution gave additional rights to women than before. In particular, Article 25 declared that every citizen was equal before the law and that there would be no discrimination based on sex alone. It goes on further to empower the state to take any special measures for the protection of women and children. The 1973 constitution further stipulated that the state shall protect marriage, family, and mother and child and called for 'full' participation of women in national life.²⁵ The Constitution provides cover to several rights that need to be accorded in line with CEDAW including, Article 25 on equality of citizens, Article 26 on non-discrimination in respect of access to public spaces, and Article 27 on safeguard against discrimination in services.

In addition to the chapter on fundamental rights and principles of policy, it gives the structure and powers of the government, the structure and power of the courts in Pakistan, and the process for the appointments of the higher judiciary. It sets up the Judicial Commission of Pakistan and schedules the subjects that are within provincial and/or federal domains.

Additionally, civil, family and criminal laws of the country also safeguard the rights of women as envisioned under CEDAW including but not limited to, the National Commission on the Status of Women Act 2012,²⁶ Punjab Fair Representation of Women Act 2014,²⁷ Punjab Commission on the Status of Women Act 2014,²⁸ Punjab Protection against Harassment of Women at the Workplace Act

²¹ Ibid

²² Rubina Saigol, 'The Struggle for Women's Rights Legislation', (*Lawyer.pk* 2 December 2020) <<https://lawyer.pk/blog/View/struggle-for-women-right>>

²³ Ibid

²⁴ It has been attempted to be amended at least 25 times since 1973, see Constitution Amendments (*Senate of Pakistan*) <<https://senate.gov.pk/en/essence.php?id=1053&catid=3&subcatid=182&leftcatid=148&cattitle=Legislative%20Documents>> accessed 1 February 2020. However, amendments 9, 11 and 15 were not passed.

²⁵ Ibid

²⁶ National Commission on the Status of Women Act, 2012 <https://senate.gov.pk/uploads/documents/1358920299_652.pdf>

²⁷ Punjab Fair Representation of Women Act, 2014 <<http://punjablaws.gov.pk/laws/2558.html>>

²⁸ Punjab Commission on Status of Women Act, 2014 <<http://punjablaws.gov.pk/laws/2555.html>>

2010,²⁹ The Protection of Women (Criminal Laws) (Amendments) Act 2006,³⁰ the Anti Rape Act 2021³¹ and the Criminal Laws (Amendment) Act 2021.³²

As per the 1973 Constitution, Pakistan is a parliamentary democracy with a federal system of government. The Supreme Court of Pakistan is the apex court and has jurisdiction to hear appeals on points of law,³³ advisory jurisdiction on any question of law that the President deems to be of public importance³⁴ as well as original jurisdiction under A184(3) of the Constitution of Pakistan on matters of fundamental rights either on its own motion or on the application of any person.³⁵

In addition to that, the Supreme Court also has the power to make its own rules, transfer cases, issue directions or decrees as may be necessary for doing complete justice and review its judgments and orders. The Chief Justice of Pakistan has extensive and arbitrary powers under the law, rules, and constitution to fix benches, and cases and initiate nominations for judicial appointments. We will discuss some of this in more detail in our gap analysis that follows.³⁶

The country follows the system of judicial precedent. The decision of higher courts is binding on all lower courts. Each province has a High Court with benches in select cities throughout the province in accordance with Article 198 of the Constitution of Pakistan. In addition to the appellate jurisdiction, the High Courts also have original jurisdiction under Article 199 concerning enforcement of the chapter of fundamental rights.

The courts of the magistrate, in respect of criminal matters, and the courts of the civil judges, in respect of civil matters are usually the courts of the first instance. Appeals from decisions of the magistrates are heard by session judges whereas appeals from decisions of civil judges are heard by district judges. Appeals from decisions of district and sessions judges are heard by the High Courts.³⁷ In addition to having jurisdiction to hear appeals, the High Courts may issue writs or orders against federal and provincial governments and persons performing functions in connection with the affairs of such governments, including companies owned and controlled by such governments.³⁸

In November 2017, Asia's first dedicated court to hear cases of gender-based violence (GBV court) was set up through efforts of the then Chief Justice of Lahore High Court, Justice Mansoor Ali Shah with support from the Asian Development Bank.³⁹ For the first time, a victim-centric lens was adopted

²⁹ Punjab Protection Against Harassment of Women at Workplace Act, 2012, <<http://punjablaws.gov.pk/laws/2426a.html>>

³⁰The Protection of Women (Criminal Laws) (Amendments) Act, 2006 <https://na.gov.pk/uploads/documents/1321341579_812.pdf>

³¹Anti-Rape (Investigation and Trial) Act, 2021 <https://na.gov.pk/uploads/documents/61b2f64a4744a_953.pdf>

³² Criminal Laws (Amendment) Act 2021 <https://na.gov.pk/uploads/documents/61b2fcb19ffe6_557.pdf>

³³ Article 185 of the Constitution of Pakistan, 1973

³⁴ Ibid Article 186

³⁵ Ibid Article 184

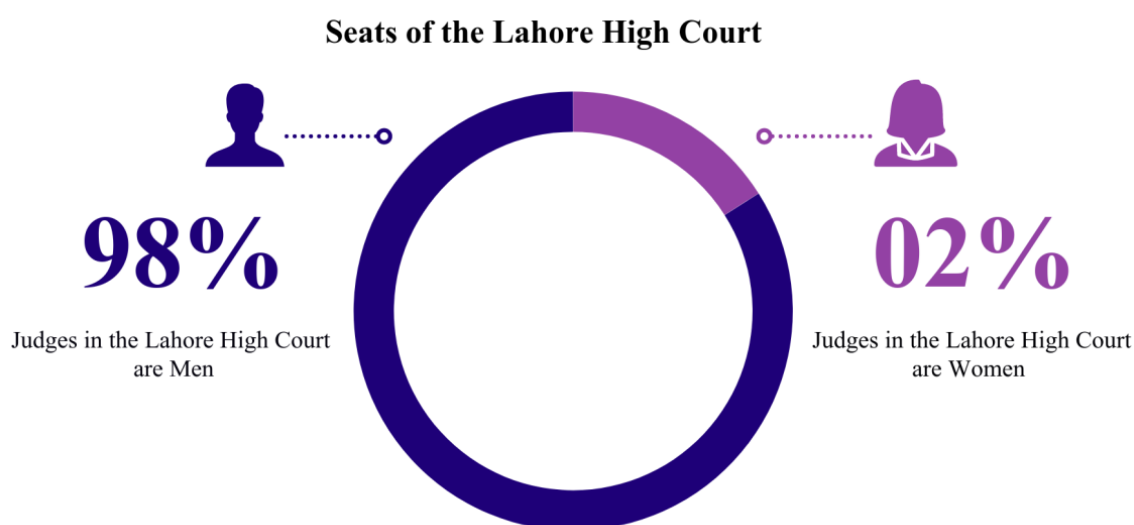
³⁶ Ibid Articles 186A and 191

³⁷ Mayhar Mustafa Kazi, Anum Bawany, Sara Mansoor Ansari and Muhammad Humza Khalid, 'Country Focus, Pakistan The Legal Landscape', Gideon Robertson in association with RIAA Barker Gillette, (London, June 2017) 1 <<https://www.riabarkergillette.com/wp-content/uploads/2018/01/Pakistan-Country-Focus-RIAA-Barker-Gillette-2017.pdf>> accessed 20 January 2022

³⁸ Ibid 2

³⁹ Irum Ahsan, 'Challenging Norms on Gender Based Violence in Pakistani Courts' (*Asian Development Blog* 24 November 2017) <<https://blogs.adb.org/blog/challenging-norms-gender-based-violence-pakistani-courts>> accessed 28 January 2022

to set up the court and procedures with a view to being sensitive to the needs of the victim of gender-based crimes. In addition to that, for the first time, female court staff, readers, and female prosecutors were hired in a bid to create a more welcoming environment for victims to access the courts with more comfort, confidence, and ease. The conviction rate in rape cases in Pakistan stood at 2-3 % only. However, the one-year evaluation of the first GBV court in Lahore showed that the conviction rate for rape cases heard in the specialized court rose to 16.5 %.⁴⁰ This model is set to be replicated under the recently passed Anti Rape Act 2021. The Act empowers the President in consultation with the Chief Justice of Pakistan to establish or designate special courts throughout the country to try the scheduled offenses under the Act which relate mostly to gender-based violence. If this is implemented, we may see an increase in the representation of female staff and prosecutors in the justice sector.



However, otherwise in Punjab, the principal seat of the provincial High Court is in Lahore with benches in Multan and Rawalpindi amongst others and out of the 47 sitting judges, only 1 is female. Currently, therefore, 98% of judges in the provincial High Court are men while only 2% are women which is very low.⁴¹

It is important to understand the justice sector in this socio-political context to be able to understand some of the nuances of the gaps identified later through this study because there has been a significant influence of these ideologies and interjections in the democratic process leading to the marginalization of women’s rights and them being used as bargaining chips; traded freely or denied to establish and maintain the power dynamics and interests of ruling forces.⁴²

The justice sector, much like the society is a product of the patriarchal roots and the hegemony of men in positions of power. That it is not only that most of the substantive laws in the country lack the

⁴⁰ Zarizana Aziz, ‘Gender Based Violence Courts in Pakistan: A Gap in Gender Equality Remains, but a Promising Start’, (*Oxford Human Rights Hub* 7 June 2020) <<https://ohrh.law.ox.ac.uk/gender-based-violence-courts-in-pakistan-a-gap-in-gender-equality-remains-but-a-promising-start/>> accessed 28 January 2022

⁴¹ Hon’ble Sitting Judges (*Lahore High Court*) <https://data.lhc.gov.pk/judges/sitting_judges> accessed 28 January 2022

⁴² Rubina Saigol, ‘Feminism and the Women’s Movement in Pakistan’, (2016) Friedrich Ebert Stiftung, 9. <<https://asia.fes.de/news/feminism-and-the-women-movement-in-pakistan>> 28

perspective of female voices,⁴³ but also that even the procedures and processes largely do not cater to almost half of the population of the country. They do not seem to have been designed with a lens of inclusion. Women, from the time, that they were officially allowed to study law and enter the profession were seen to be stepping into a system that had already been established by men.⁴⁴ To succeed, they were expected to survive and thrive in the setting that had been predetermined and in which they had had no role, voice, or contribution to establishing.

As highlighted by Erin Orr:

Traditional theorists such as Rousseau and Freud defined the social gender roles for our generation, whereby the rationality of men allowed them to thrive in the public realm and the maternal role of women compelled them to remain in the private realm (Thorton, 2017: 762). Activists involved in the first wave of feminism during the early part of the century fought against these assumptions to permit women to study law and enter the legal field (Thorton, 2017: 762). Since that time, women have continuously struggled to distinguish themselves in the field of law and open the doors for other women.⁴⁵

The public/private divide and gender roles meant that women were expected to take to domestic or feminine roles. The courts and justice sector were hardly the career choice a ‘good’ woman was expected to make. Therefore, even though, Pakistan’s first female barrister Salma Sobhan was called to bar in 1959⁴⁶ and its first female judge, Justice (r) Khalida Rashid Khan was appointed in 1974,⁴⁷ the legal profession and the justice sector largely remained dominated by men. The women were few and far between and seldom reached positions of leadership and authority. Only 12% of females are advocates in Pakistan even today, of them, only 4% are Advocates of the Supreme Court.⁴⁸

In 128 years of its history, the Lahore High Court Bar Association has only ever had four women as its President a total of five times.⁴⁹ Women only account for 2% of members in the bar councils of the country today and the first-ever female was appointed as a justice in the Supreme Court after seventy-four years of its independence. The representation of women in Superior Courts as judges also stands at around a negligible 5% while only 15% of women make up judges in the subordinate judiciary. Pakistan has never had a female Attorney General or a female Prosecutor General. The number of Law firms led by women or in which they are partners are also negligible.

This disparity is of concern particularly in the context of access to justice for women and children (girls in particular) because the key forums through which rights are to be accessed and enforced

⁴³ Such as for instance, the Legal Practitioners and Bar Councils Act, 1973

⁴⁴ Section 3, Legal Practitioners (Women) Act, 1923 [now repealed and replaced by respective laws in India and Pakistan post partition]

⁴⁵ Erin Orr, ‘Do Female Justices Make a Difference on the Bench? A Study of Gender and Consensus at the Alberta Court of Appeal’, (2017), MRP submitted to the Department of Political Science Western University, 3

<https://www.academia.edu/34087216/Do_Female_Justices_Make_a_Difference_on_the_Bench_A_Study_of_Gender_and_Consensus_at_the_Alberta_Court_of_Appeal_by_Erin_Orr?email_work_card=view-paper>

⁴⁶ Timeline of Women Lawyers, (*Lawyer.pk*) <<https://www.lawyher.pk/>>

⁴⁷ Ibid

⁴⁸ Nida Usman Chaudhary, ‘State of Women’s Representation in Law Baseline Study’, (2021) Lawyer.pk, 27 <https://www.lawyher.pk/Uploads/State%20of%20Womens%20Representation%20in%20Law%20Report%20-%202021%20Lawyer.pk_bd26.pdf> accessed 10 January 2022

⁴⁹ Annexure, *Rules of the Lahore High Court Bar Association*, (*Lahore High Court Bar Association*, July 2018) See also

<<https://twitter.com/WomenInLawPk/status/1480891664789118979?s=20&t=CWfvaO0eavXDhOqlnda2Eg>>

currently do not appear to include gender-diverse voices in Pakistan. As a result, the legal profession and the resulting jurisprudence fail to benefit from the lived experience and unique perspectives of half of the population which could lead to increased alienation among women, that may already be at risk and lack any real agency in a patriarchal society, from accessing justice.

As Rida Hosain explains in her paper, for too long our apex courts have been missing the crucial perspective of women from the Benches. This lack of diversity has contributed to perpetuating prejudicial norms, particularly in cases of violence against women such as in honor killings where an entire defense of “sudden provocation” was developed in successive cases as opposed to focusing on the crime that had been committed suggesting that the murders of women were secondary to the impulse and feelings of the men who committed the crime. In this way, the jurisprudence from the apex court has largely centralized the male perspective rather than that of the victim.⁵⁰

This is not to suggest that no male judge in the entirety of the Court is capable of making decisions that positively impact women, or adequately address gender bias. Rather, Hosain indicates that the idea is to point toward a structural deficiency that renders the judicial process capable of ignoring the voices of women – even if they might occasionally choose not to.⁵¹ For instance, in the Mukhtaran Mai Case, Justice Nasir ul Mulk’s dissenting note was the only judgment that showed understanding of the social and cultural barriers for women in our society. However, lone progressive voices, do not address the structural issues that underlie the systemic challenges related to access to justice.

Noting the gender disparity in the legal profession as a major challenge for fair representation in the justice sector, this study looked for gaps in the recruitments and appointments process in four select aspects of the justice sector. These include the Judiciary, Law Firms & Legal Practices, Bar Councils, and Prosecution. We believe that by identifying and addressing the socio-legal gaps in the recruitment and appointments process and policies in the justice sector, we would be able to come up with more pragmatic solutions with a measurable impact in practice for fair representation in the justice sector for greater public confidence, access to justice, better quality jurisprudence and rule of law. In doing so we also looked at the international norms and comparative procedures in regional, international, and other commonwealth countries to assess the gaps in the structures and processes in Pakistan as well as to identify best practices and other recommendations that Pakistan may benefit from for fair representation in the justice sector.

Before we discuss the gaps in detail, we turn to the conceptual exploration of what fair representation means in the context of the justice sector.

⁵⁰ Rida Hosain, ‘A Court of One’s Own: The Importance of Female Voices in the Supreme Court of Pakistan’, (2021) Pakistan Journal of Diversity and Inclusion
<https://www.lawyher.pk/Uploads/PJDI%202021_a849.pdf>

⁵¹ Ibid, 47

What is Fair Representation in the Justice Sector?

‘Representation’ is a term that has mostly been used in the context of political theory and form of government where it is understood to reflect the indirect representation of the constituents who relinquish their rights to participate directly in the government to those whom they elect to represent themselves in the Parliament.⁵² Very little has been written about what ‘representation’ means or what it is. Several commentators agree that the word may not be capable of precise definition and that it may vary depending upon the application of the concept in its various contexts.⁵³

The most comprehensive work on this, however, is by Pitkin who in her book takes a more linguistic and conceptual analysis to delve into the meaning of the word itself as opposed to placing it within the political context or form of government.⁵⁴ She asserts that ‘representation’ as a concept has one basic meaning that has remained the same since the seventeenth century and explains that it simply means that ‘something not present is considered as present in a nonliteral sense.’⁵⁵

Although over-simplistic, this formulation of the word ‘representation’ is helpful when speaking of it in the context of the justice sector, particularly the judiciary given that citizens do not directly elect judges and so cannot be said to have ‘relinquished’ their rights to them for representing them or their interests at the bench. But judges are involved with the interpretation and application of the law on matters of public importance and fundamental rights of people which can have a direct impact on them; re resourced and financed through public monies and have historically comprised of men from upper-class backgrounds leading to a de facto hegemony over decisions potentially impacting all citizens.

Several studies have been conducted in the west regarding judicial attitudes and it has transpired that despite the textbook ideals of essential traits of a judge that include amongst others, independence, integrity, impartiality, objectivity, and neutrality, adherence to a normative set of beliefs and values are reflected in the reasoning and decision-making of the judiciary. In particular, Wilson in her important article on whether women judges make a difference highlighted that a review by Professor Norma Wikler, of several studies on judicial attitudes, confirmed that male judges tend to adhere to traditional values and beliefs about the natures of men and women and their proper roles in society.⁵⁶

Judicial impartiality has been questioned in recent times. In his text, *The Politics of the Judiciary*, Professor Griffith concludes that impartiality is an ideal incapable of realization. He says of the English judiciary:

⁵² Orr (n 45) 26

⁵³ Hanna Fenichel Pitkin, *The Concept of Representation*, (University of California Press, 1972) 5

⁵⁴ Ibid

⁵⁵ Ibid 9

⁵⁶ Bertha Wilson, ‘Will Women Judges Make a Difference’, (1990) *Osgoode Hall Law Journal* Vol 28, No 3, 512 <<https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1764&context=ohlj>>. She emphasized that ‘The studies show overwhelming evidence that gender-based myths, biases, and stereotypes are deeply embedded in the attitudes of many male judges, as well as in the law itself. Researchers have concluded that gender difference has been a significant factor in judicial decision-making, particularly in the areas of tort law, criminal law, and family law. Further, many have concluded that sexism is the unarticulated underlying premise of many judgments in these areas and that this is not surprising having regard to the nature of the society in which the judges themselves have been socialized.’

*'These judges have by their education and training and the pursuit of their profession as barristers acquired a strikingly homogeneous collection of attitudes, beliefs and principles, which to them represents the public interest.'*⁵⁷

The public interest, in other words, is perceived from the viewpoint of their class.⁵⁸

In the context of Pakistan, instances of character shaming by judges of victims of sexual harassment, rape and other forms of gender-based violence show that a judge is susceptible to his human weaknesses and social conditioning.

For instance, the Lahore High Court judge in the Khadija Siddiqui case – the girl who was stabbed twenty-three times in broad daylight in Lahore, questioned her character based on her past behaviour and relation with the convict and overturned the five-year imprisonment sentence passed by the Sessions Court and acquitted the convict of all charges.⁵⁹ The judge also laid stress on the fact that Khadija did not immediately name her attacker in the FIR; not factoring that he was the son of an influential lawyer and that it takes a lot of courage for victims to speak out. With no protection programmes and a culture where women are discredited, blamed and disbelieved and, in this case, stabbed not once, not twice, but twenty-three times in broad daylight, to have doubt being cast on their testimony and intentions in a court of law adds to the harrowing experience women frequently encounter in courts. Similar attitudes and allegations are often seen being levelled in custody, guardianship, maintenance, 'khula' and divorce cases.⁶⁰

As opposed to this, Justice Ayesha A. Malik's landmark judgement banning the two-finger test for determining virginity in cases of sexual assault and rape and declaring the process as being unconstitutional, unlawful, unscientific and in violation of the dignity of the victim is one of the most perceptive judgements in recent years for advancing the cause of women and protecting their rights and dignity.⁶¹

Subsequently, Justice Mansoor Ali Shah in the Supreme Court reaffirmed that:

A woman, whatever her sexual character or reputation may be, is entitled to equal protection of the law. No one has the license to invade her person or violate her privacy on the ground of her alleged immoral character. Even if the victim of rape is accustomed to sexual intercourse, it is not determinative in a rape case; the real fact-in-issue is whether or not the accused committed rape on her. If the victim had lost her virginity earlier, it does not give anyone the right to rape her. In a criminal trial relating to rape, it is the accused that is on trial and not the victim. The courts should also discontinue the use of painfully intrusive and inappropriate expressions, like "habituated to sex", "woman of easy virtue", "woman of loose moral character", and "non-virgin", for the alleged

⁵⁷ J.A.G. Griffith, *The Politics of the Judiciary* (Manchester: Manchester University Press, 1977) cited in Bertha Wilson (n 56) 509

⁵⁸ Wilson (n 56) 510

⁵⁹ 'Khadija Case: LHC Judge Rules Prosecution Failed to Establish Attacker's Guilt' (*Dawn*, 7 June 2018) <<https://www.dawn.com/news/1412621>>

⁶⁰ Naeem Sauhoutra, 'Know Your Rights: Rights of a Spouse' (*Express Tribune* 16 December 2014) <<https://tribune.com.pk/story/807840/know-your-rights-rights-of-a-spouse>> accessed 22 January 2022

⁶¹ *Sadaf Aziz Vs Federation of Pakistan etc*, [2021] LHC, P Cr. LJ 205 Lahore <<https://sys.lhc.gov.pk/appjudgments/2020LHC3407.pdf>>

*rape victims even if they find that the charge of rape is not proved against the accused. Such expressions are unconstitutional and illegal.*⁶²

It appears, as Wilson states, that:

*'If women lawyers and women judges through their differing perspectives on life can bring new humanity to bear on the decision-making process, perhaps they will make a difference. Perhaps they will succeed in infusing the law with an understanding of what it means to be fully human.'*⁶³

Various studies have shown that more women in leadership positions usually present gender-sensitive and friendly outcomes for services.⁶⁴

The successful experience of establishing and operating the Gender-Based Violence Court in Lahore, with female prosecutors and court staff is further evidence of the fact that representation of women in such roles makes a tangible difference and promotes access to justice.

Some feminist scholars have also argued that the presence of diverse views can play a role in offsetting the partiality inherent in homogeneity and play a major role in introducing judicial neutrality and impartiality into the justice system. Such that diversity becomes a tool for ensuring impartiality as opposed to a factor that erodes impartiality.

But what does 'representation' and more importantly, 'fair representation' mean in this context especially when the justice sector is not directly elected by the constituents, and, more importantly, how can it be achieved?

Does, for instance, fair representation means quantifiable presence in terms of the numbers of persons from under-represented groups who share the same traits by the ratio and proportion of the populace? Or does it mean in the sense of 'agency' or 'proxy' whereby one acts on behalf of another without necessarily being from the same community or sharing the same traits? The consensus in Punjab as per our findings appears to be on the former.

32% of the respondents stated the lack of role models in similar roles as a reason for not considering applying for the judiciary in the justice sector while 52% said the same for not competing for bar elections. Given that there is more representation of women in the judiciary (15%) as compared to in the bar councils (2%), this explains why over 50% of women cited a lack of female role models as a reason for not pursuing bar elections whereas a lesser percentage said the same about the judiciary. In other words, the more the representation of women in a sector, the less the percentage of women who cite a lack of female role models as a reason for not pursuing that sector. It appears that they see the presence of persons from the same community, gender, class, etc. as a sense of being represented and/or equate it to having a voice that they would be more likely to resonate with while accessing justice and/or reclaiming their space in representative roles in the justice sector.

From this it follows, that increasing the presence of women in leadership positions within the justice sector is expected to prompt more interest and willingness in other females to consider joining similar

⁶² *Atif Zareef vs The State*, [2021] Criminal Appeal No.251/2020 & Criminal Petition No.667/2020, Para 12 <https://www.supremecourt.gov.pk/downloads_judgements/crl.a._251_2020.pdf>

⁶³ Wilson (n 56) 522

⁶⁴ UNODC, Crime Prevention on and Criminal Justice, 2019 in Punjab Gender Parity Report 2019-20 (Punjab Commission on Status of Women, 2021) 231 <https://pcsw.punjab.gov.pk/system/files/PGPR-2019%20%26%2020_12.pdf> accessed 3 February 2022

roles and claiming their space. Similar reasons have been cited by the province's leading public sector university offering the law degree, for appointing its first female principal of the law college. Their website states:

It is worth noting here that Prof. Dr. Shazia N. Qureshi, Principal of Law College, is the first woman principal in the long and rich history of the college. Her appointment is ranked important by both male and female staff members for inculcating values of merit, removal of discrimination against women in the college specifically, and society, generally, it also encourages young women to join the profession.⁶⁵

In 2014, the Punjab Assembly passed the Punjab Fair Representation of Women Act 2014 to, 'amend certain laws of Punjab for purposes of fair representation of women in the decision-making process and their empowerment'.⁶⁶ By this law, statutes of sixty-six public bodies were amended to increase the representation of women up to 33% in each of those bodies.

In 2015 a private member's Bill along similar lines was introduced in the National Assembly by Dr. Shireen Mazari to increase the role of women in the decision-making process to achieve gender balance in public administration entities and the judiciary.⁶⁷ The statement of objects of the Bill specifically stated that the scope of the Bill was not limited and must be widened by giving women 33% representation in all the main administration and Boards of Federal Educational Institutions, public sector universities, and higher judiciary.⁶⁸ However, neither did the Bill get passed nor did it contain any amendments to the composition of the higher judiciary in its substantive part. What it does reflect nevertheless, was the focus on indicative of an increase in numerical strength as a sign of an increase in representation of a marginalized class.

What we draw from here is that 'representation' means the quantifiable presence of under-represented persons by the ratio and proportion of the populace and 'fair representation' means a representation that is based on an idea of fairness and justice that accommodates the idea of proportional representation but also balances historical and structural inequities with the practical limitations so that fair representation is proportional representation.

This leads us to consider a related question raised often by male lawyers in the context of the proportion of the percentage of female advocates in the profession and its nexus with the percentage of female judges in Pakistan. They point out that if women make up 15% of the judiciary in Pakistan and only 12% of advocates in Pakistan, then is it not fair representation already?

This question, however, amongst other issues, fails to take into account the breakdown of these figures at different tiers of the judiciary. Women make up 15% of the judiciary in Pakistan overall. This figure however, significantly diminishes as you break it down to reveal that 99% of this 15% figure pertains to women in the subordinate judiciary as women, amongst themselves, only make up about 1.1% of the superior judiciary in Pakistan out of the overall figure of 15%.

⁶⁵ 'History of University Law College', (*University Law College*)

<<http://pu.edu.pk/home/department/37/University-Law-College#:~:text=Law%20College%20was%20established%20in,by%20the%20College%20in%201870>> accessed 26 January 2022

⁶⁶ Punjab Fair Representation of Women Act, 2014 <<http://punjablaws.gov.pk/laws/2558.html>>

⁶⁷ Fair Representation of Women Bill, 2015 <https://na.gov.pk/uploads/documents/1450169780_166.pdf>

⁶⁸ Ibid

Moreover, proponents of fair representation argue that representation is not to be gauged in terms of representation of female advocates only, rather it is to be gauged in terms of the percentage of the female population in Pakistan which currently stands at almost 50% that does not have a fair let alone an adequate voice in the apex court and other sectors of the justice sector.⁶⁹ They also argue that the fixation on the idea that it is only the advocates that need representation must also be questioned given that in other countries where there have been concerted efforts to be more inclusive, judges have been appointed from academia and other non-traditional career backgrounds as well.

In the context of Pakistan, women being roughly half the population, this would mean that they should be represented equally in the justice sector at 50% if fair representation is to be understood as a proportional representation that balances the historical and structural inequities.

50% is, therefore, our desired percentage of representation to be considered fair in any given sector of the justice system. However, as the baseline study illustrates, none of the sectors in the justice system have achieved this ratio yet.⁷⁰ Taking 50% as our desired figure, we calculated the difference to arrive at the percentage increase required for fair representation in the justice sector in Pakistan.

The results are as follows:

% Increase Required Overall for Fair Representation of Women

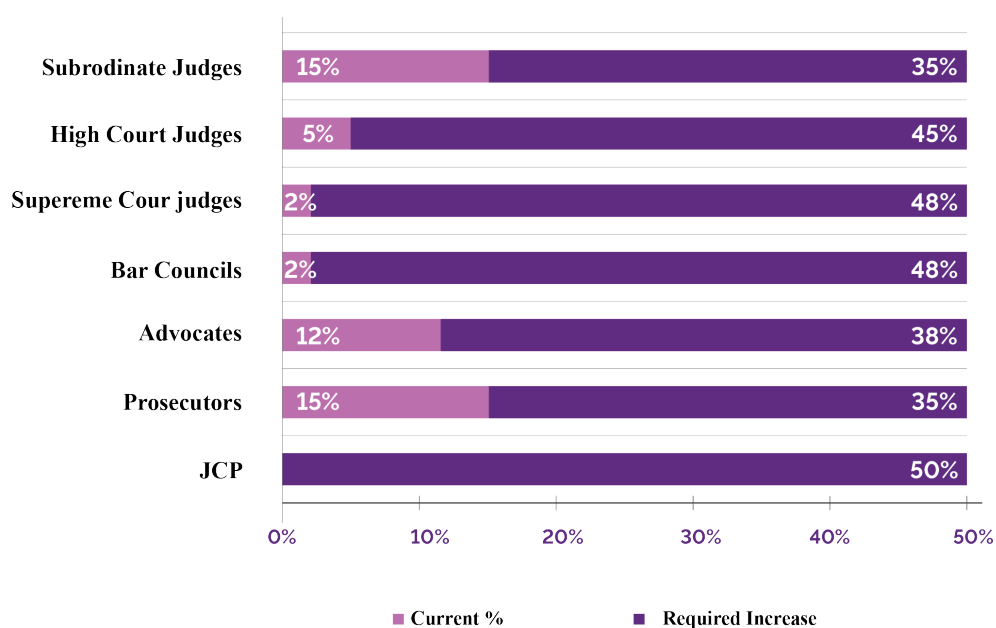


Figure 1 – Existing Percentage of Representation and the Percentage Increase Required for Fair Representation in Selected Sectors

⁶⁹ Aneesa Agha, ‘Panel Talk on Fair Representation’, (24 November 2021) <<https://www.youtube.com/watch?v=bATJypzRzjI>>

⁷⁰ Chaudhary (n 48)

The chart above shows the existing percentage of representation in the justice sector as well as the percentage increase required to achieve fair representation of women in the justice sector in Pakistan. Taking 50% as the benchmark, the results indicate that there is a need to increase the representation of women in the subordinate judiciary by 35%. In the High Courts by 45%, in the Supreme Court and the bar councils by 48% each, 38% for advocates, 35% for prosecutors, and 50% in the composition of the Judicial Commission of Pakistan.

This can be achieved if the gaps identified in this study are addressed and the recommendations in the study are taken into consideration in the recruitment and appointments process and related reforms in the justice sector. We now turn to discuss these in more detail below.

“It has been frequently asked to us that there are only 12% advocates and 15% women in the judiciary so why aren’t women happy? But when we talk about fair representation, we are not talking about fair representation of females’ advocates’, we are talking about fair representation of 50% of women of Pakistan that does not have a voice in the higher judiciary, in the third branch of government. So, for us it’s the 50% that should be represented in the higher judiciary; also, why are we fixated on the idea that it’s only advocates that need representation? In other countries where there have been concerted efforts to include more female representation in government or the judiciary, judges have been appointed from academia, corporate lawyers, from civil rights activists, and another thing I would like to mention, is that this figure hides more than it reveals because even by, to my mind the faulty logic of this question, when we look at the higher judiciary, it’s only 5.8% of women in the High Court and then 0% at the Supreme Court so even if we were to follow the presumption in the question, women are not adequately represented and certainly not fairly represented.”



Barrister Aneesa Agha
Symposium on Diversity and Inclusion, 24 November 2021
Islamabad

Gap Analysis

This part of the study focuses on highlighting the gaps in the recruitment and appointment process in the justice sector based on our primary and secondary research.

Benchmarks

Affirmative Action	Equality	Inclusion	Transparency
Full Participation of Women in National Life	Equal Representation & Decision-Making Power	Non-Discrimination	

For this study, a gap is said to exist when the standards and practices of existing recruitment and appointments process and policies do not correspond to the legal, constitutional, international, and other norms and principles for fair representation within the justice sector (“Legal and Constitutional Gaps”).

A gap is also said to exist when structural and invisible barriers originating from socio, economic, ethnic, gender, religious, or other biases and factors, hinder or impair women’s access to the pool of eligible candidates for recruitment and appointments in the justice sector. (“Structural and Invisible Gaps”)

The inter-disciplinary approach to the gap analysis enabled us to take a holistic view of the issue of disparity in the representation of women in the justice sector in Pakistan. While our main objective was to identify the main constitutional and legislative as well as the socio, cultural, structural, and/or invisible barriers that hinder women’s access to equal opportunities for entry and advancement in the justice sector, our research led us to gain unique insights into the apprehensions, perceptions, expectations, and experiences of the stakeholders, including female lawyers, female law students, members of the legal community and institutional stakeholders.

i) Legal and Constitutional Gaps

The legislative and constitutional gaps have been identified and highlighted after a detailed literature review and analysis of the existing international and comparative laws, principles, and norms under international conventions and treaties and practices rooted essentially in the notion of non-discrimination, equality, and commitment to diversity and inclusion through affirmative actions. We also looked at the principles enunciated in the Constitution of Pakistan 1973 and its Principles of Policies as the benchmark against which we weighed existing practices, processes, and rules of recruitment and appointment in the justice sector. Where no direct legal provisions were available such as in the case of law firms that operate independently and do not usually have formal recruitment and progression policies, such a gap was also identified and so in that case, reliance was placed on the primary data to understand and identify the gaps based on the experiences of the respondents.

Gaps:

- A. Lack of Affirmative Action and Gender Inclusive Language
- B. Lack of Representation of Women in Composition of Bodies Responsible for Recruitment and/or Nominations
- C. Discretionary and Arbitrary powers to Recruit Concentrated in Single Institution/Office
- D. Regulatory Capture of Bar Councils
- E. No Publicly Declared Commitment to Gender Equality and Inclusion
- F. No Transparency in the Processes and Lack of Regulation of Law Firms for Basic Rights of Employees/Workers
- G. No Application of Pro-Women Laws to make the Sectors Conducive and sensitive to Needs of Female Lawyers

Actions: Legal and Constitutional Reforms to Ensure Fair Representation of Women

1. Through reserved ratio of representation in different sectors of justice including Higher Judiciary, Prosecution, and Bar Councils
2. Through an amendment to Article 175A of the Constitution and Rule 3 of Judicial Commission of Pakistan Rules 2010
3. Through amendments to the Legal Practitioners and Bar Councils Act 1973 and Rules 1976
4. Through the implementation of existing pro-women laws in the legal sector (such as maternity leave, protection from workplace harassment, and protection from Gender-Based Violence)
5. Through passing new laws for addressing regulatory capture of Bar Councils and regulation of law firms
6. Through law reforms separating the Regulatory and Representative Role of Bar Councils

Gaps:

A - Lack of Affirmative Action and Gender Inclusive Language

The laws, Constitution, and international obligations of Pakistan require that it takes affirmative action for ensuring a degree of operative equality for the advancement of women and their full participation in national life, however, the main legal and constitutional gaps that hinder fair representation of women in the justice sector include amongst others, the lack of affirmative actions or reserved seats for ensuring operative equality and/or fair representation of women in the judiciary, bar councils, prosecution and in law firms and chambers. This shows that laws and rules need to expressly make provision for affirmative action to ensure fair representation of women through, for instance, reserved seats or a reserved ratio that no single gender would comprise more than half of the composition of a given body/institution. Most of these laws are also not written in a gender-neutral or gender-inclusive language.⁷¹

⁷¹ Although, Section 29 of the Legal Practitioners and Bar Councils Act 1973 expressly acknowledges that no woman shall be disqualified for admission as an advocate for a reason only of her sex,⁷¹ yet the language of Section 5A is not gender-neutral. It speaks of qualifications in terms of the masculine 'he'. Although, as per rules of interpretation of the Constitution of Pakistan, the word 'he' includes 'she' and so by analogy Section 5A is not specific for or limited to men,⁷¹ however, words matter, and a gender-neutral rephrasing of the section might be a useful step in increasing the possibility and acceptance of more women coming forward to stand for the elections.

If an express provision encouraging female or transgender candidates to apply/be considered is adopted, it may perhaps lead to a more welcoming perception shift in terms of the accessibility and acceptance of diverse genders to be considered, recruited, or appointed for such positions. This would require, legal and constitutional amendments to rules, laws, and the Constitution of Pakistan 1973 particularly, in the Articles about the appointment of judges in the higher courts.

We explain this in relation to judicial appointments below:

❖ *Judicial Recruitment and/or Appointments Process and its Implications for Fair Representation*

If we consider the recruitment and appointments process related to the judiciary in Pakistan, we would find:

- a. in Pakistan, the recruitment and appointments process of the subordinate judiciary is completely different from the appointments process of the higher judiciary;
- b. the process at both subordinate and higher judiciary, however, lacks any provision for affirmative action for ensuring women's representation even though a quota for minorities and disabled persons is given.⁷²

The judges in the subordinate courts in Punjab are recruited by the Punjab Judicial Service Rules 1994 (as amended).⁷³ The Rules designate Lahore High Court as the Appointing Authority⁷⁴ and prescribe a detailed method of recruitment and promotion of subordinate judges.⁷⁵ The requirements may vary depending upon the tier for which a vacancy has arisen. In all cases, however, three essential stages are envisaged under the rules, these include:

- i. Recruitment
- ii. Confirmation
- iii. Promotion

The recruitments of subordinate judges can be of two types:

- i. Initial appointments/fresh recruitments made otherwise than by promotion or transfer, and
- ii. Promotions or transfers from another service, department, or post.

In the case of recruitment of judges of the courts of the first instance i.e. for vacancies for Civil Judge Cum Magistrate posts, all recruitments are based on initial appointments based on results of a competitive examination and subject to confirmation after probation. The vacancies for Additional Districts and Sessions Judge are filled using both types of recruitments i.e. fresh appointments and

⁷² It is interesting to observe that a three percent (3%) quota is reserved for disabled persons as envisaged by Disabled Persons (Employment and Rehabilitation) Ordinance, 1981 and as amended by Section 2 of the Punjab Disabled Persons (Employment and Rehabilitation) (Amendment) Act, 2015 and Five percent (5%) quota is reserved for minorities in the light of Government of the Punjab Notification No. SOR-III(S&GAD)1-35/93, dated 27.03.2010 for recruitment as a Civil Judge Cum Magistrate and as Additional District and Sessions Judge.⁷² However, there is no separate quota for women. See, Advertisement, 'Civil Judge cum Magistrate', (Lahore High Court) <https://www.lhc.gov.pk/system/files/2_Adv_CJs.pdf>

⁷³ Ibid, Rule 5

⁷⁴ Ibid, Rule 4

⁷⁵ Ibid, Rules, 5, 7A, 7B, 7C, and 7D.

promotions as per a stated percentage while vacancies for the post of District and Sessions Judges are all filled based on seniority-cum-fitness basis.

Given that the subordinate judiciary is ‘recruited’ under the Punjab Judicial Service Rules, they are considered to be civil servants who are liable to be transferred anywhere in Punjab, serve in any department of the Government or any local authority or statutory body set up or established by the Government and serve anywhere in Pakistan under the Federal Government.⁷⁶ The judges of the superior courts which include the High Courts, the Federal Shariat Court, and the Supreme Court are, however, ‘appointed’ as per the Constitution of Pakistan and they take ‘oath’ of their office under the Constitution itself.⁷⁷

Unlike the judges in the subordinate courts, the judges of the superior courts are ‘independent’ from the Executive, in that, they cannot be transferred without their consent.⁷⁸ The subordinate judiciary positions are, therefore, positions for a ‘career in judiciary’ as opposed to the judges in the superior courts who take oath for a constitutional position, have a secured tenure, and are independent of the control of the Executive. In other words, they are not working as civil servants for the government but have their independent constitutional role and jurisdiction.

Under the existing law, the process of nominations and appointments of the judges of superior courts is laid down in Article 175-A of the Constitution of Pakistan 1973 read with Rule 3 of the Judicial Commission of Pakistan Rules 2010 (hereinafter referred to as “2010 rules”).

The eligibility requirements are laid down for judges of the Supreme Court and High Court in Articles 177 and 193 of the Constitution respectively. It is interesting to observe that while there is a minimum age requirement for an appointment as a Judge of the High Court, there is no such requirement for an appointment as a Judge of the Supreme Court of Pakistan. This implies that a person can potentially qualify to be a Judge of the Supreme Court whilst yet not be eligible to be appointed as a Judge of the High Court.

Rule 3 of the 2010 rules states that for each anticipated or actual vacancy of a judge, the Chief Justice of Pakistan or the Chief Justice of the respective High Court as the case may be is to initiate nominations in the Judicial Commission for appointment against a vacancy in the higher judiciary.⁷⁹

It is this arbitrary discretion of the Chief Justice and lack of transparency of the factors or the ‘criteria’ in initiating such nominations that have been the subject of much controversy and debate in recent years. The bar councils and associations have demanded that such discretion be curbed and that criteria for nominations and appointment of the judiciary be developed by the JCP and that until such time that a criterion is developed, the nominations against vacancies be made based on the ‘seniority’ principle as an interim measure.

On the other hand, some lawyers, and collectives such as Women in Law Initiative Pakistan, whilst largely agreeing on the need for reform of the judicial appointments process, nevertheless cautioned the bar to resist the urge to read into law, principles that are unsupported by the Law and Constitution surrounding this area. They highlighted that ‘seniority’ was only a requirement for the appointment of the Chief Justice, for all other vacancies in the superior courts, there was no requirement to follow

⁷⁶ Rule 10, Punjab Judicial Service Rules, 1974

⁷⁷ Articles 177, 178, 193, 194, and 203C of the Constitution of Pakistan, 1973

⁷⁸ Article 200 of the Constitution of Pakistan

⁷⁹ Rule 3, Judicial Commission of Pakistan Rules, 2010

the list of seniority under the existing law and Constitution of Pakistan. This was not without reason. In the case of *Supreme Court Bar Association v Federation of Pakistan*, the Supreme Court asserted that:

*'We are clear to our mind that neither the principle of seniority is applicable as a mandatory rule for the appointment of Judges in the Supreme Court nor the said rule has attained the status of a convention'*⁸⁰

In their view, the consultative process envisaged in the constitution for the nomination and appointments of superior judges would become redundant and superfluous if the rule of seniority was held applicable to the appointment of the Judges of the Supreme Court because in that eventuality the process would become automatic and mechanical.

Furthermore, in PLD 2019 Sindh 399 and PLD 2002 SC 939 it was held that appointments in the Supreme Court are 'fresh appointments' i.e., akin to initial appointments and not promotions, therefore, the question of continuity of seniority or service did not arise.

Post the 18th amendment of the Constitution in 2010, Article 175-A very clearly spoke of seniority only in case of appointment of the Chief Justice.⁸¹ This was also in line with the pre-18th amendment case of *Al Jihad Trust* known more widely as the judges' case of 1996, often cited incorrectly as the basis for demanding the principle of seniority for the appointment of all judges in the superior courts.⁸²

Lawyers from the Women in Law Initiative Pakistan further questioned the efficacy of deploying the 'seniority principle' even as an interim measure and argued that the solution being proposed by some sections of the Bar in form of the seniority principle would indeed prove to be counter-productive, in that, they highlighted that 'seniority' was no guarantee for representation and could not be used to ensure that a balanced and representative Supreme Court would come to be composed through this means.

They also highlighted that introducing 'seniority' as a basis for an appointment, even as an interim measure would result in creating a 'right' of the 'senior-most judge' to be nominated/appointed which would be very difficult to retract once it was entrenched and established. Therefore, they urged that 'seniority' even as an interim measure should be avoided.

Women in Law seemed to be seeking reforms to the judicial appointments process from the lens of ensuring representation, diversity, and inclusion by directing the attention of the Bench and bar to read Rule 3 of the 2010 Rules along with Articles 25 and 34 of the Constitution of Pakistan 1973 that calls for equality of all citizens, non-discrimination based on sex and state duty to ensure women's full participation in national life through affirmative actions, where required. In this regard, The Judicial Commission of Pakistan could draw inspiration from Ontario's Judicial Appointments Advisory Committee, where one of the first responsibilities that the committee delved into was writing a letter to the 1200 female lawyers in the province, asking them to consider applying to become a judge. This was a course of action which resulted in Ontario's 40 percent appointed judges being women from the years 1990 to 1992.⁴¹ If the Judicial Commission in Pakistan takes over the responsibility of calling all women and other marginalized persons practicing law in Pakistan to apply for vacancies in the senior judiciary, it may be viewed as a positive sign and an open invitation to a possibility of being accepted on the bench.

⁸⁰ *Supreme Court Bar Association v Federation of Pakistan* [2002] SC (PLD 2002 SC 939) Para 23

⁸¹ Article 175-A (3) Constitution of Pakistan 1973

⁸² *Al Jihad Trust v The Federation of Pakistan* [1996] SC (PLD 1996 SC 324)

The bar, instead, seemed to be focused on rooting the reform in the desire to curb the arbitrary authority of the Chief Justice and to limit his discretion as opposed to ensuring representation, diversity, and inclusion. This is because they did not take back their demand for JCP to adopt the principle of seniority for appointments of judges in the higher judiciary despite the calls by Women in Law.

Key Findings Related to Judicial Appointments

	Law Students	Female Lawyers	Legal Community
Lack of Transparency in Judicial Appointments Process	94% Agreed	90% Agreed	100% Agreed
Factors that Hinder Judicial Appointments from being more Diverse and Inclusive:			
1. Political Affiliation/Chamber Politics	-	-	87%
2. Composition of JCP	61%	71%	-
3. Gender	49%	-	62%
4. Insistence on Seniority	57%	58%	-
5. Structural Impediments (such as lack of networking opportunities, lack of support facilities, or other systemic barriers)	-	48%	75%
6. Others (social status, lack of awareness of pre-requisites and early discouragement from active legal practice leading to erasure, invisible labor or push back of female lawyers, and bar politics sabotaging efforts to be inclusive and diverse)	-	-	62%
Should appointments in the judiciary be open to legal professionals from academia and other non-traditional career fields in law?	-	63% Said Yes	75% Said Yes

Our findings show that 94% of the **female law student** respondents agreed that the process of appointments in superior courts needs to be more transparent. 90% of the **female lawyers** agreed that the process needs more transparency, while 100% of the respondents from the **legal community** agreed that the process of nomination and appointment of judges in the superior courts of Pakistan needs to be more transparent. 69% of **female lawyers** believe that nominations for vacancies in the superior judiciary should not be moved by the Chief Justice alone.

Furthermore, the **female law students** identified political affiliation and/or chamber/group politics (61%), Gender (57%), and lack of gender diversity in the composition of JCP (49%) as the prominent factors hindering the judicial appointments process in being more diverse and inclusive. For **female lawyers**, the factors hindering the judicial appointments process in being more diverse and inclusive; political affiliation and/or chamber/group politics emerged as one of the most prominent factors at 71% followed by gender at 58% and insistence on 'seniority' which is not even a requirement for appointments of the superior judiciary at 48%. For the respondents from the **legal community**, the factors hindering the judicial appointments process in being more diverse and inclusive; political affiliation and/or chamber/group politics emerged as the most prominent factor at 87% followed by structural impediments in the profession holding women back (such as lack of networking opportunities, lack of support facilities or other systemic barriers) at 75% and gender, social status, lack of awareness of pre-requisites and early discouragement from active legal practice leading to erasure, invisible labor or push back of female lawyers, and bar politics sabotaging efforts to be inclusive and diverse at 62% each.

Prominent reforms proposed to address challenges associated with nominations of the higher judiciary	Law Students	Female Lawyers	Legal Community
Objective criteria after consultation with all stakeholders including women	38%	37%	-
Open and publicly declared process of inviting applications to fill vacancies in superior judicial posts	80%	71%	75%
The constitutional amendment of Article 175-A	35%	44%	-
Appointment of higher judiciary via competitive exam to increase diversity and inclusion	86%	74%	50%
Structural reforms aimed at ensuring more diversity and inclusiveness for instance by improving access for differently-abled persons, safe workplaces, gender sensitivity training, etc	-	44%	62%
Amendment in Rule 3 of the Judicial Commission of Pakistan Rules 2010 so that Chief Justice alone does not have the power to move the nomination for appointment of judges in superior courts	-	-	75%
Factors that took 74 years for a woman to be appointed as a justice of the Supreme Court of Pakistan:	-	-	75%
Inability to accept women in leading positions and lack of eligibility due to non-active legal practice in courts/not enough	-	-	75%

reported judgments or cases appeared to meet the eligibility requirements or other factors			
Lack of information on the process, procedures, requirements to pursue judiciary as a career in subordinate courts, lack of inclusion of female voices in discussions and debates surrounding judicial appointments, systemic hurdles and structural barriers that keep women out of the composition of bodies that decide on appointments, early discouragement from active legal practice from schools, teachers and seniors and their gender	-	-	62%
Eligibility for appointments be opened to legal professionals from academia and other non-traditional career fields in law	-	63%	75%
Factors that should be considered for making judicial appointments more transparent, diverse, and inclusive:			
Competence	76%	84%	100%
Reputation	37%	53%	62%
Integrity	49%	47%	-
Need for diversity	-	-	62%
Disclosures of tax records and other financial/assets	-	-	75%
Does disparity in several male and female Advocates Supreme Court in turn impact the role and chance of representation of women in leadership positions within the legal institutions such as the Pakistan Bar Council, Judicial Commission of Pakistan, and, appointments at the Supreme Court?	-	-	100%

Reform on multiple levels was suggested to address the challenges associated with the nominations of superior judges of which agreeing on criteria after consultation with all stakeholders including women (38%) was a prominent factor followed by the constitutional amendment of Article 175-A (35%), however, 86% of the **female law students** said that judges in superior courts also be appointed via examination as a measure to increase diversity and opportunity. 74% of **female lawyers** stated that judges of superior courts should also be appointed via examination as a measure to increase diversity and opportunity.

Among the **female lawyers**, 44% believed that challenges associated with nominations and appointments of superior judges can be addressed via structural reforms aimed at ensuring more diversity and inclusiveness for instance by improving access for differently-abled persons, safe workplaces, gender sensitivity training, etc and via constitutional amendment of Article 175-A, while 37% stated the same could be addressed by agreeing on criteria after consensus and consultation of all stakeholders including women. However, 75% of the respondents from the **legal community** believed this should be via amendment in Rule 3 of the Judicial Commission of Pakistan Rules 2010 so that Chief Justice alone does not have the power to move the nomination for appointment of judges in superior courts. 62% of them believed that this should be through structural reforms aimed at ensuring more diversity and inclusiveness for instance by improving access for the differently-abled persons, safe workplaces, sensitivity training, etc, through affirmative action such as quotas for representation, Through more information, awareness and advertisement about the vacancies and process of nominations and/or recruitments and appointments and through more training, workshops, and courses for those interested to take up judiciary as a career option.

80% of the **female law students** support the notion that should be an open and publicly declared process of application to fill vacant posts even in superior courts. While 71% of the **female lawyers** agreed that there should be an open and publicly declared process of application to fill vacant posts even in superior courts.

Out of the members of the **legal community**, 75% believe that there should be an open and publicly declared process of application to fill vacant posts even in superior courts. For them, factors that took 74 years for a woman to be appointed as a justice of the Supreme Court of Pakistan, inability to accept women in leading positions and lack of eligibility due to non-active legal practice in courts/not enough reported judgments or cases appeared in to meet the eligibility requirements or other factors were cited as the most prominent factors at 75%, followed by lack of information of process, procedures, requirements to pursue judiciary as a career in subordinate courts, lack of inclusion of female voices in discussions and debates surrounding judicial appointments, systemic hurdles and structural barriers that keep women out of the composition of bodies that decide on appointments, early discouragement from active legal practice from schools, teachers and seniors and their gender at 62% each.

63% of the **female lawyers** agreed that recruitment and appointments in the judiciary should be open to legal professionals from academia and other non-traditional career fields in law, while 75% of the members of the **legal community** who responded supported the notion that recruitment and appointments in judiciary be opened to legal professionals from academia and other non-traditional career fields in law.

Of the factors that should be considered for making judicial appointments more transparent, diverse, and inclusive, competence was cited at 84%, 53% of female lawyers cited the reputation of the nominee while 47% of them stressed integrity. For the **female law students**, competence emerged as the most prominent factor at 76%, followed by integrity at 49% and reputation of the nominee at 37%. For the members of the **legal community** who responded, competence was the most prominent at 100%, followed by disclosures of tax records and other financial/assets at 75% and reputation of the nominee and need to ensure diversity at 62% each respectively, while 50 % agree that judges in superior courts also be appointed via examination as a measure to increase diversity and opportunity.

100% of the respondents from the members of the **legal community** agreed that the disparity in the number of male and female Advocates Supreme Court in turn impacts the role and chance of representation of women in leadership positions within the legal institutions such as the Pakistan Bar Council, Judicial Commission of Pakistan, appointments at Supreme Court, etc.

From this, we draw that although, there largely is consensus on the need to reform of judicial appointments process to make it less arbitrary and more transparent, there is no consensus, on the underlying object and purpose of the reform in that, whether the purpose should be to curb the powers of the Chief Justice or whether the basis of reform should be to promote and ensure diversity and inclusion. This is significant because the underlying approach would matter a great deal at the time when the finer details of the nature and shape of reform are discussed.

It appears that there certainly would be a challenge for increasing women's representation if more technicalities such as 'seniority' are introduced or preferred as opposed to a more egalitarian concept of ensuring diversity and inclusion. This is because the experience of laying stress on technical qualifications such as number of reported judgments etc has historically hindered the advancement of women and all other deserving candidates who are left behind for want of such technicalities. For instance, to apply for a license to practice as an advocate Supreme Court, a list of at least 15 cases has to be produced in which the coil as argued and attended the court. The lawyers that practice mostly in subordinate tiers, whose judgments do not get reported may find it longer to meet these requirements for eligibility, thereby pushing their 'seniority' down the line vis a vis someone who has a more active practice in the High Court and hence a higher chance of meeting these requirements faster. In the case

of women, it is even more challenging to meet these requirements because they are usually not encouraged to pursue active legal practice. This results in their attendance not being marked for the case in the court nor in the meeting the requisite number of reported cases etc pushing their ‘seniority’ and chance of being considered for advancement in the profession even further.

As one of the respondents explained:

Either woman doesn't get hired in law firms and when they do, they are not encouraged to litigate. The male counterparts get to go to courts taking the briefs prepared by female associates. The male colleagues are the ones that get to argue before judges, have their attendance marked, and have their names reflected in the orders and judgments that ensue. This impacts our chances of progressing in the field because, at the time of applying for High Court Licenses and Supreme Court Licenses, we are required to furnish a list of ten to fifteen cases in which we have appeared as counsel or have assisted our seniors. If we are not getting the opportunity to go to courts, argue, or have our attendance marked and reflected in the orders and judgments, then naturally our progression will be much slower than our male counterparts and it is. This is also the reason that when it comes to the nominations for vacancies in higher courts as judges, the Chief Justice seldom initiates the names of females because they hardly know of any since very few get to appear regularly before the courts.

Interestingly, before the British, the criteria for judicial appointments were not so focused purely on professional qualifications and did allow considerations for more normative virtues such as integrity, reputation, etc.⁸³ Even more interestingly, even the British have since 2005,⁸⁴ moved away from purely professional qualifications towards the objective of increasing representation of underrepresented groups in the justice sector while we continue to abide by the legacy of technicalities that they left behind and which often are employed more as a tactic for gatekeeping than for promoting high standards.

For these reasons, any reforms to the judicial appointments process or for that matter in any other aspect of the justice sector must be based on the underlying objective of ensuring and promoting diversity and inclusion. The fact that currently, no such safeguards in the shape of affirmative action exist, nor is Article 25 of the Constitution being applied to ensure fair representation, is a gap that must be filled.

⁸³ Faqir Hussain, *The Judicial System of Pakistan* (4th Edn, Federal Judicial Academy Islamabad 2015) 1 <https://www.supremecourt.gov.pk/downloads_judgements/all_downloads/Judicial_System_of_Pakistan/thejudicialsystemofPakistan.pdf> accessed 19 January 2022

⁸⁴ The UK Constitutional Reform Act of 2005 dramatically changed the role of the Lord Chancellor and introduced an independent Judicial Appointments Commission (“JAC”), responsible for selecting candidates to recommend for judicial appointment to the Secretary of State for Justice. In 2013, Lady Justice Hale set up the Judicial Diversity Committee that works alongside the Judicial Appointments Commission in the UK to facilitate and pursue initiatives for a more diverse pool of candidates looking to commence their judicial careers. Since 2015, the committee has run increasingly popular application workshops aimed at under-represented groups. These form part of a positive action pro that is intergraded to help candidates make stronger applications; but once they have completed the program, they are expected to compete on merit with the other applicants. To attract more solicitors and legal academics to the senior judiciary, they have extended the eligibility of the High Court program to those without litigation experience. Between 2013 and 2017, the proportion of female judges in the tribunals increased from 43% to 45%, and the percentage of Black Asian & Minority Ethnic (BAME) judges increased from 9% to 10%. This shows that even the British, have themselves moved away from strictly applying professional qualifications, age, standing, and citizenship or seniority as the basis for judicial appointments towards a more merit-based, open, and inclusive system of appointments.

B - Lack of Representation of Women in the Composition of Bodies/Authorities Responsible for Recruitment and Nominations/Appointments

Sector	Recruitment or Nomination Body	Gender of Present Incumbent of Recruitment / Nomination Body
Subordinate Judiciary	Punjab Public Service Commission + CJ Lahore High Court	Male
Higher Judiciary	CJ Lahore High Court + Judicial Commission of Pakistan	Male
Prosecution Service	Punjab Public Service Commission + Prosecutor General	Male
Prosecutor General	Provincial Government	Male
Provincial Bar Council	Lawyers eligible to vote in Provincial Bar Council elections	Male-Dominated
Pakistan Bar Council	Elected Members of the Provincial Bar Council constitute the electoral college	Male-Dominated
Law Firms	Managing Partners of Law Firms	Male-Dominated
Chambers Allotment	District Bar Association	Male Led

As the table above shows, the recruitment and/or nomination bodies in different sectors of justice are led or dominated by men. The lack of representation of women in the composition of these integral bodies has emerged as a major gap that hinders women's entry and advancement in the legal profession. This is because these bodies and incumbents enjoy important discretionary and arbitrary powers as regards recruitment and nominations to fill vacancies. While the lack of women in these bodies cannot be taken as evidence to suggest that women are never considered for recruitment or nomination for these vacancies by the incumbents, however, the lack of representation of women does raise concerns over the process of constituting these critical bodies in a way in which the inclusion of lived experiences and voices of female stakeholders has not been ensured. Law reforms to ensure inclusion and fair representation is, therefore, a key step forward to address this gap.

For instance, the Judicial Commission of Pakistan (JCP) which is the main Constitutional body that considers the nominations moved by the Chief Justice for appointment of judges in higher courts and forwards them to the Parliamentary Committee for confirmation. The composition of this central body responsible for appointing a higher judiciary is not diverse and inclusive. The JCP is comprised of a total of nine members which include, former and senior judges, ex officio members such as the Federal Law Minister and the Attorney General for Pakistan as well as a representative of the bar councils. Currently, all the members of the JCP are male and currently, no woman is represented in its composition.

This is interesting because on paper, there are ex officio and representative positions within the existing structure of the JCP such as the member that is a representative of the bar could well be a woman, as can the position for former judges can potentially include former female judges to be included as members of the JCP. This shows that there is technically, no legal bar on women from being members of the JCP. Despite that, if the body is wholly comprised of men, then one must question the structural and/or invisible factors that have not enabled the composition of such an integral body to be diverse and inclusive. On the other hand, this also amplifies the need to ensure the representation of women through affirmative action in such public and/or constitutional bodies as a measure to address the structural or invisible barriers that may otherwise hinder the inclusion of women as members of such bodies.

The situation in the Prosecution sector is not very different. At the time of writing this study, in Punjab, there were 1058 prosecutors of which only 178 were women.⁸⁵ According to these numbers, women constituted only 17% of the prosecutors in Punjab. To date, no female has ever been appointed as the Prosecutor General in Punjab even though it has been fifteen years since the Service has been functional.⁸⁶

Despite this, like the subordinate judiciary, there is no reserved ratio for women to be recruited in prosecution service to ensure fair representation, even though there are seats reserved for minorities and the differently-abled. Women and transgenders, however, can compete on regular seats but from the perspective of fair representation, this may be challenging given that there is no equal opportunity statement in the advertisements for posts, and neither is there a statement to the effect that women and/or transgender are encouraged to apply. This is a gap that needs to be addressed.

C - Discretionary and Arbitrary Powers to Recruit and Appoint Concentrated in Single Institution/Office

A related issue as regards fair representation that ensues is that in the justice sector of Pakistan, whether it is the recruitment in the subordinate judiciary, the recruitment of prosecutors, the nomination of lawyers or judges for appointment in the higher judiciary, allocation of chambers in district bars or hiring interns/associates in a law firm, arbitrary powers, and discretion given in laws and rules, in the hands of a single institution/office for recruitments and appointments under them, is likely to be a key factor that adds to the disparity in recruitment and appointment of several male and females in a given sector.

Regarding promotions and appointments in the judiciary, such a discretion impacts advocates from outside the principal seat of the Provincial High Court even more. As one of the respondents from Rawalpindi explained:

'It is even more difficult for lawyers from outside Lahore and in particular for female lawyers outside Lahore to be considered for nominations, promotions, or appointments by the Lahore High Court because they are even further removed from the proximity of the environment that can promote the chances of advancement of women from these other cities. They are not able to travel as easily to argue cases before the principal seat therefore, the Chief is hardly aware of them to be able to put forward their name for consideration because he

⁸⁵ (n 4)

⁸⁶ Prosecutor General, Government of Punjab, 'Our Prosecutor Generals' (About PCPS) <<https://pg.punjab.gov.pk/ourpg>> accessed 28 December 2021

is only one person with this power. How many suitable candidates from all across the province and who all can he possibly know of?’

Usually, even in instances where the candidates are expected to clear a written exam for vacancies in the justice sector (such as for subordinate judiciary and prosecution service), such examinations are followed by viva, psychological and other tests, and ultimately an interview, which is where the concerned institution/officeholder may again exercise discretion.⁸⁷ There is, therefore, considerable discretion at the interview stage that rests with the incumbent of the recruitment or nomination body. In absence of affirmative action to ensure fair representation, the discretion at the interview stage may continue to hinder chances of addressing the gender disparity in the justice sector. Accordingly, this is a gap that can be addressed via legal and constitutional amendments that ensure affirmative action for representation so that such bodies themselves reflect the diversity needed for fair representation in the justice sector.

D - Regulatory Capture of Bar Councils

The bar councils in Pakistan are the main statutory regulatory bodies of lawyers in Pakistan. They are established under the Legal Practitioners and Bar Councils Act 1973. We have looked at the Pakistan Bar Council and the Provincial Bar Council i.e., the Punjab Bar Council for our study. We found that the regulatory bodies such as the bar councils are unable to regulate due to the central role the voters have in their elections. There needs to be a separation of the regulatory and representative roles exercised by the bar councils.

The issue with the composition of bar councils is more unique and requires a wider appreciation of the structural and invisible barriers. This is because despite being the only category that we have shortlisted for our study whose members are ‘elected’ as opposed to ‘recruited’ or ‘appointed’, the bars, in the true sense of the term, are supposed to be ‘representative’ bodies and yet, the disparity in numbers paints a different picture altogether. As the baseline study shows, only 2% of women make up members of bar council from all across Pakistan which cannot be said to be ‘fair’ representation.⁸⁸

Firstly, it is important to recognize that much like the JCP, these bar councils also have no safeguards to ensure and promote the representation of women in their composition. In that, they may be gender-neutral but they are certainly not gender-intentional. This is significant because while a gender-neutral approach aims to create a de jure level playing field, it does not take into account any systemic, invisible, practical, social, or structural factors that may result in an unequal playing field on a de facto basis.

Secondly, it is important to realize why such safeguards may be necessary and why there may be a need for a more gender-diverse composition of such bodies. The short answer is that these bodies play a significant role in the advancement of a professional in the legal profession. The bar councils, in particular, have the additional responsibility to regulate the profession and have considerable authority and resources to ensure that a safe and enabling environment can be created for all its members, especially those that may be under-represented or more vulnerable.

⁸⁷ See for instance PPSC Advertisement for the post of DPP dated 17 March 2021 <<https://www.ppsc.gov.pk/Adds/Adv%20no.05-2021%2010-03-2021%20X7%20Version.pdf>>

⁸⁸ Chaudhary (n 48) 21

In practice, however, neither of these bodies fairly includes women in their composition, and the bars, in particular, have the added challenge known more popularly as ‘regulatory capture’ that hinders them from discharging their regulatory role as effectively as envisaged.

This is because the members of the provincial bar councils are ‘elected’ to power by the very lawyers the council is expected to regulate. This theory of regulatory capture was also recognized by the superior courts in cases such as *Barrister Sardar Muhammad vs Federation of Pakistan*,⁸⁹ which stated that regulatory capture occurs where a regulatory agency, created to act in the public interest, instead advances the commercial or special concerns of interests’ groups, often at the expense of public interest.⁹⁰

The process of complaints against advocates itself is marred with controversy as it is dominated by the advocates who work to protect their interests as a class as opposed to seeking compliance with regulations or codes of conduct.

As Anique Malik explains:

‘Anyone wishing to file a complaint of misconduct against an advocate has to pass a two-stage process in which members elected by advocates themselves dominate the entire process. Thereafter, an appeal may lie to the Pakistan Bar Council, another representative body of lawyers, after which one final appeal is available before a truly independent forum i.e., the Supreme Court. The process raises serious questions concerning the conflict of interest and impartiality of adjudicators which are amongst the most basic requirements of the principles of natural justice.’⁹¹

In a report, submitted by Secretary Punjab Bar Council before the Supreme Court in Criminal Petition No. 240 of 2012, it was revealed that for the period 2009-2015, the Pakistan Bar Council disposed of 11 complaints with no penalty imposed on any of them; 29 complaints were received by the KP Bar Council with the penalty being imposed in one case (3.4 percent) while the remaining cases were pending in the relevant period; 117 complaints were received by the Punjab Bar Council with the penalty being imposed in only five cases (1.7pc) while 96 of the 117 cases filed remained pending; 27 new complaints were received by the Sindh Bar Council none of which were decided in the relevant period of five years.⁹²

A thorough reading of the Legal Practitioners and Bar Council Rules 1976 further reveals the extent to which voters are entrenched in the entire process of nomination and pitching of the candidates for election in these offices.⁹³ Not only are the voters required to propose names of the candidates, but they also have a say in the inspection and scrutiny of the proposals so received. This shows that members so elected are crucially dependent upon the voters not just for the votes but also for the nomination of their candidacy itself and the inspection and scrutiny of their candidature. Even though the Returning Officer (RO) has the prerogative to accept or reject the proposals after hearing the objections, nevertheless, the central role of the voter in the candidacy for elections appears to be the basis of the regulatory capture of the independence and impartiality of the bar which remains questionable in these circumstances.

⁸⁹ *Barrister Sardar Muhammad v The Federation of Pakistan* [2013] LHC (2013 PLD 343)

<https://pakistanlaw.pk/case_judgements/21734/barrister-sardar-muhammad-versus-federation-of-pakistan>

⁹⁰ Anique Malik, ‘A Failed Model’, (*Dawn*, 23 November 2020) <<https://www.dawn.com/news/1591874>>

⁹¹ *Ibid*

⁹² *Ibid*

⁹³ Legal Practitioners and Bar Council Rules 1976

When a similar challenge of regulatory capture was faced by the legal services in England and Wales, a very instructive and insightful consultative paper by Sir David Clementi in 2004 that reviewed the regulatory framework for legal services in England and Wales found that there were multiple bodies in the UK with regulatory powers and that at least five of the professional bodies, the Law Society, the Bar Council, the Institute of Legal Executives, the Chartered Institute of Patent Agents and the Institute of Trade Mark Attorneys, combined regulatory functions and representative functions.⁹⁴ His paper raised the fundamental issue of whether it was appropriate to combine the regulatory functions of a professional body, where the public interest has primacy, with the representative functions, where the interest of the members has primacy.⁹⁵ He recommended that professional bodies holding both regulatory and representative responsibilities should separate those roles to uphold independence, integrity, best interests of the client, transparency, accountability, and promoting access to justice and rule of law. These were later codified as the regulatory objectives under Section 1(1) of the Legal Services Act 2007.

The government adopted this recommendation and in 2007, the Solicitors Regulatory Authority (SRA) was formed under the Legal Services Act 2007 as an independent regulator of solicitors whereas the representative role remained with The Law Society.

According to the SRA Governance Handbook of October 2021:

The SRA was established by the Law Society (TLS) to exercise the regulatory powers found in legislation: including the Solicitors Act 1974, the Administration of Justice Act 1985, and the Legal Services Act 2007 (LSA), the latter of which the TLS is named as an “approved regulator” to authorize individuals and firms to carry out certain reserved legal activities. The SRA exercises those powers under delegated authority, governed by the Law Society’s General Regulations. In 2021 the SRA was incorporated as a Private Company Limited by Guarantee under the Companies Act 2006. The Articles of Association of the SRA regulate the internal affairs of the Company. The directors of the Board are otherwise referred to in this document as Board members. The LSA also established the Legal Services Board (LSB) as the independent statutory body to oversee the work of the legal sector regulators in England and Wales. The SRA works with the LSB and under its rules, including the Internal Governance Rules 2019 (IGRs) which safeguard the independent exercise by approved regulators of their regulatory functions.⁹⁶

The SRA website states that although it was previously called the Law Society Regulation Board, it changed its name to emphasize its independence and to bring clarity to its scope of work.⁹⁷

In Pakistan, however, there appears to be little impetus to commit to any principled objectives of regulation. Any reforms that can challenge the status quo to make the system any better for its users are often met with organized resistance through the bar councils that prioritize their representative role over their regulatory role, therefore, whether Pakistan can achieve a similar clarity and separation in the regulatory and representative body of lawyers is, for now, a moot point. However, the one encouraging development that the Pakistan Bar Council made via amendments to the Rules in 2020

⁹⁴ David Clementi, ‘Review of Regulatory Framework for Legal Services in England and Wales: A Consultation Paper’, (*The National Archives*, 2004)
T<https://webarchive.nationalarchives.gov.uk/ukgwa/20070307120821/http://www.legal-services-review.org.uk/content/consult/consult_reviewpaper.pdf>

⁹⁵ Ibid Para 5, 25

⁹⁶ Solicitors Regulation Authority, *Governance Handbook* (SRA, October 2021) 1
<<https://www.sra.org.uk/globalassets/documents/sra/sra-governance-handbook.pdf?version=4aac19>>

⁹⁷ Solicitors Regulation Authority, ‘How We Work’, (About Us) <<https://www.sra.org.uk/sra/how-we-work/>> accessed 2 February 2022

by inserting clauses 10-A and 10-B in the 1976 Rules. These provisions relate to the conduct of the candidate and their election campaign the breach of which may lead to disqualification on grounds of misconduct.

Rule 10-A specifically bars the candidates and his/her supporters from canvassing for votes through advertisement, banners, placards, stickers, panaflex hoardings, calendars, dairies, key-chains, posters, etc, they also expressly prohibit all prospective and/or contesting candidates or 'his/her supporters from use or show of any kind of weapon during election campaign or on the day of the election. However, 'he/she' may solicit support through personal contact and by issuing letters and visiting cards of the maximum size of 3x5 inches on which they may also display their photograph but cannot approach any voter directly or indirectly, at their residence. The candidates are also barred from giving any meal, lunches, dinner, tea, etc. to voters directly or indirectly in connection with the election campaign. Similar provisions regarding campaigning for elections of the Pakistan Bar Council are laid down in Rule 31-A of the 1976 Rules.

One of the aspects of these provisions that is encouraging is that at least on paper, these provisions not only attempt to level the playing field for candidates from different income brackets by banning the practice of candidates throwing lavish tea parties to woo the voters but are also worded in relatively more inclusive terms by using the feminine prefixes of 'she' and 'her' next to 'he' and 'him' or 'his', wherever they are used. This shows that there is perhaps an increase in the acceptance and contemplation of women being part of the electoral and candidacy process, which it is hoped will pave the way for further reforms with a gender lens. However, as reported by some of the respondents, lunches and dinners are still routinely arranged in honor of the candidates by their supporters to which the legal community, in general, is also usually invited. Such instances could potentially roll back any gains that could have been made by these provisions for leveling the playing field.

However, it is important to highlight that as per the majority of the female respondents to our survey, one of the most prominent reasons for women giving up their space in litigation and bar elections has been the uncouth behavior and demeanor of some of their colleagues and the general dismissive and belittling attitude towards women, despite this, we saw how the conflation of the regulatory and representative role of the bars has led to a situation where no concrete measures to address these barriers have been able to be set up. Therefore, the fact that the main regulatory body of lawyers tasked to maintain discipline and ensure compliance with the code of conduct, etc. is not an independent body but is dependent on the votes of those it is supposed to regulate may serve as a major challenge for any regulation against the lawyers.

However, even if there is regulatory capture and the Council is said to represent the interests of a group, it must be asked whose interests do they represent? Lawyers are not all a homogenized group and within the legal community itself, there is a dominant class whose interests get reflected and/or protected in and through the bar councils. From the lens of gender, this would largely be men because, in absence of any affirmative actions for fair representation, only 1.3% of women are represented in the Punjab Bar Council today.

As per Section 5A of the Legal Practitioners and Bar Councils Act 1973, a person shall be qualified to be elected as a member of a Provincial Bar Council if he:

- a. is on the roll of advocates of the High Court maintained by the Provincial Bar Council for *not less than five years*;

- b. has, on the day of filing of the nomination paper, been an advocate for not less than *fifteen* years; and
- c. has cleared all the dues payable by him to the Provincial Bar Council.⁹⁸

Although, Section 29 of 1973 expressly acknowledges that no woman shall be disqualified for admission as an advocate for a reason only of her sex,⁹⁹ the language of Section 5A is not gender-neutral. It speaks of qualifications in terms of the masculine ‘he’. Although, as per rules of interpretation of the Constitution of Pakistan, the word ‘he’ includes ‘she’ and so by analogy Section 5A is not specific for or limited to men,¹⁰⁰ however, words matter, and a gender-neutral rephrasing of the section might be a useful step in increasing the possibility and acceptance of more women coming forward to stand for the elections.

Secondly, it is interesting to note that the 1973 Act was amended in 2018, just two years before the 2020 elections.¹⁰¹ These amendments added periods to the eligibility requirements for a candidacy that resulted in many potential candidates being pushed back by five years before they could meet the qualification for candidacy. Previously, there was no five-year flooring to be on the Roll of advocates and the candidate had to show ten years as an advocate on the day of filing the nomination papers. This was raised to fifteen years in 2018. As a result of this, many candidates who could have qualified to stand for elections in 2020, had to wait out another five years as a result of this amendment before they could stand for elections.

Members from the Women in Law Initiative Pakistan have highlighted this as an attempt at ‘gatekeeping’ the regulatory corridors of the bar council from both women and young lawyers since both these classes have been impacted the most by these amendments.¹⁰² Neither do young lawyers find a seat and a voice at the Council nor do women or those outside active legal practice find any space. Rather, they are actively pushed back through such amendments. This is because women joined the legal profession much later than men and many women applied for their licenses even later after entering because of the various factors that this study has identified in the sections that follow.

Of them, one of the most recurring factors was the discouragement that women face from their time in the law school to the time they enter the profession from active legal practice. They are advised to adopt desk roles, research, drafting in-house positions, or teaching roles and are discouraged from pursuing litigation or going to courts because the ‘environment is not conducive for women.’ As a result of this, they often find no reason in applying for the license because if their work does not involve active legal practice, then they don’t usually require one for pursuing the alternative career options they are advised to take up instead.

Secondly, there is a dearth of accurate and accessible information on both, the need to apply for a license as well as on how to apply for one. As one of our respondents stated:

⁹⁸ Section 5A, Legal Practitioners and Bar Councils Act, 1973

⁹⁹ Ibid, Section 29

¹⁰⁰ Article 263, Constitution of Pakistan, 1973

¹⁰¹ Section 4 and 6, Legal Practitioners and Bar Councils (amendment) Act 2018

<www.na.gov.pk/uploads/documents/1528787986_361.pdf>

¹⁰² Nida Usman Chaudhary, ‘Legal Profession: An Introspection’, (*The News*, 12 December 2020)

<<https://www.thenews.com.pk/print/757235-the-legal-profession-an-introspection#:~:text=The%20writer%20is%20a%20diversity%20and%20inclusion%20advocate.&text=In%20other%20words%2C%20non%20lawyers,leadership%20roles%20within%20the%20profession>>

'I don't come from a family of lawyers. I didn't have any family background in law. I graduated in 2007 but didn't get my license until 2012 when my father-in-law, who is a lawyer finally advised me to get one and explained how seniority and progression in the profession were linked with the time of acquiring the license. Previously, I never felt the need to get one since I was not in active practice, but I realized the importance of this after losing so many years. I am now considered much junior to my juniors who were more efficient at applying and obtaining their licenses and were better advised from day one.'

For all these reasons women are pushed back and are disproportionately impacted by such provisions and amendments in law.

The provincial bar elections are held every five years. The last election was held in the year 2020. Before that, there were only two females in the Punjab Bar Council however, in 2020, instead of the number increasing; we saw that this number fell to zero initially as no woman was elected. Thereafter, one of the elected members was found to have a fake law degree that enabled Advocate Ms. Rushda Lodhi to find herself a seat in the Punjab Bar Council.¹⁰³ This means one woman out of seventy-five members. Thus, only 1.3% of female advocates are currently represented in the Punjab Bar Council. As per the 2021 baseline study, currently, in Punjab, only 11% of women are registered as advocates while 89% of men are registered as advocates with the Punjab Bar Council. If fair representation is proportional representation that also takes into consideration the historical disparities, then given that there is only 1.3% representation of women in the Punjab Bar Council, there is a need to increase representation in the Punjab Bar Council by at least 49 % for it to be fair.

The elections and composition of the Pakistan Bar Council are even more inaccessible for women. Section 11 of the 1973 Act states that the Pakistan Bar Council shall consist of the Attorney General for Pakistan, ex-officio, and twenty-three members, who shall be elected based on a single transferable vote by the members of the Provincial Bar Councils.¹⁰⁴ This means that the legal community does not vote for the members of the Pakistan Bar Council directly. They are rather elected via the votes of the Electoral College composed of the members of all Provincial Bar Councils and Islamabad Bar Council.¹⁰⁵

Like Section 5A, the eligibility for Pakistan Bar Council elections was also raised by five years via the amendment in 2018, pushing back women and younger lawyers from eligibility at this tier in the same way that they were pushed back for eligibility for the Provincial Bar Council as discussed above.¹⁰⁶ However, unfortunately, the impact is even worse. Even fewer women get to vote for the composition of the Pakistan Bar Council because only very few women end up being members of the provincial bar councils that form the electoral college for voting the members of the Pakistan Bar Council. In addition to that, Section 11A of the Legal Practitioners and Bar Councils Act 1973 states that one must be on roll of Advocate Supreme Court to be eligible for candidacy of Pakistan Bar Council. Given that women make up only 4% of Advocate Supreme Court (for various reasons that we have explored in this study as well) there is a strong need to affirmatively address this gap and ensure advancement of women in the profession for fair representation in such roles.

¹⁰³ 'PBC Cancels License of its own Executive Body Chairman, Seven Others', (*The News*, 4 December 2020) <<https://www.thenews.com.pk/print/753441-pbc-cancels-licence-of-its-own-executive-body-chairman-seven-others>>. See also: Punjab Bar Council Notification dated 14-12-2020, No, 18292 Pb BC Election. Available at: <<https://www.facebook.com/rushdalodhi74/photos/a.111070337392486/188786196287566/>>

¹⁰⁴ (n 99) Section 11

¹⁰⁵ Ibid Section 11 (1A)

¹⁰⁶ Ibid

86% of members of the legal community that responded agreed that amending laws to increase the minimum number of years required for the candidacy of bar elections such as in Legal Practitioners and Bar Councils (Amendment) Act 2018 which raised the requirement of ten years of legal practice to fifteen years of legal practice, disproportionately impacted the ability of women to stand and run for bar elections.

Secondly, as the baseline study indicates, only 4% of women are Advocates Supreme Court as compared to 11% of women that are advocates enrolled with the Punjab Bar Council so there are even fewer eligible female candidates, to begin with.¹⁰⁷ As a result, no woman is currently a member of the Pakistan Bar Council. It is the apex regulatory body of lawyers and is completely dominated by men in its composition.

Thus, from enrolment to disciplinary actions, to proposing law reforms, promoting legal education, and prescribing standards, the bar councils are at the heart of regulation and management of the legal community and women are largely missing from all of these important decisions impacting the legal community as a whole.

What is even more revealing is that in all these years, no significant efforts to increase the representation of women appear to have been undertaken by the bar even though they have been quick to dismiss the lack of representation of women in these corridors as a result of women's apprehensions in coming forward and competing for leadership positions.

As Chaudhary explains:

If in all these years this is the case then the profession and its regulators must look inwards and see what systemic hurdles, underlying biases, and other social and procedural anomalies may there be that hold woman back from advancing in law instead of only lazily always finding and placing fault with women lawyers and their supposed lack of commitment.¹⁰⁸

She goes on to assert that:

Introspective questions must be asked for any real progress to ensue. It must, for instance, be asked: what steps and measures have been taken by those in control to address the disparity on the bench and bar? It must be asked what their plan to improve the pipeline of diverse candidates is and what they have done or will do to encourage and enable the participation of women and other marginalized groups to join the judiciary and other representative positions. Have they worked on any legislative reforms or amendments to rules that enable more women and other marginalized groups to participate on a level playing field? Has any gap analysis or critical reviews of existing legislation and rules been undertaken to identify the procedural and technical provisions that disable meaningful participation of marginalized classes in the profession? For instance, was the impact on the potential of women candidates considered when the Legal Practitioner and Bar Councils act 1973 was amended in 2018 led to an increase in the number of years of legal practice of candidates for eligibility to run for provincial bar elections? What about the inclusion of young professionals, differently-abled, and the minorities in leadership positions? If no such questions have been contemplated by those with power, then what business do they or anyone for that matter have in indolently accepting that women need to do more?¹⁰⁹

¹⁰⁷ Chaudhary (n 48) 22

¹⁰⁸ Nida Usman Chaudhary, 'Legal Profession: An Introspection', (*The News*, 12 December 2020) <<https://www.thenews.com.pk/print/757235-the-legal-profession-an-introspection#:~:text=The%20writer%20is%20a%20diversity%20and%20inclusion%20advocate.&text=In%20other%20words%2C%20non%2Dlawyers,leadership%20roles%20within%20the%20profession>

¹⁰⁹ Ibid

The answers lie in the structural, systemic, social and invisible barriers and biases that plague the justice sector. For instance, why are only 4% women, Advocates Supreme Court? The answer again the answers lie in the structural, systemic, social, and invisible barriers and biases that plague the circles back to the overall culture of discouragement of women from legal practice and the lack of access to information that can guide female lawyers about the requirements for progression and advancement in the profession.

One segment of our respondents suggests that there appears to be a method to the discouragement that women are met out as it has deeper implications for their advancement in the profession. It is not only a question of keeping women ‘safe’ as is often alleged or litigation not being ‘suitable’ for them. It appears to be more about reducing competition by keeping women out of the race.

The other suggests that it isn’t so much about reducing the competition as much as it is about maintaining the status quo of male dominance. This is because they consider that women may not reciprocate the tribalism and ‘brotherhood’ that enables the lawyers to act collectively for safeguarding their interests.

Interestingly, one of the male respondents to the study while explaining why male advocates do not seem to pay much attention to their female colleagues to even acknowledge their presence at times in the bar rooms or talk over them even if they are experts in their fields, had the following to say about this:

If you look at it in one way, the bar rooms are also networking spaces so to me it seems that many male lawyers do not even consider it worth their time to invest in networking with women because they do not consider that women can provide them with any benefit in the profession. This coupled with the fact that many genuinely do not know how to interact with women in our society further compounds the entire issue.

Key Findings: Bar Councils and Election

	Law Students	Female Lawyers	Legal Community
Did-Amendment to 1973 Act increasing eligibility for candidacy disproportionately impact young lawyers and women from contesting in bar elections?	-	-	86% Said Yes
Did not Consider Running for Bar Elections:	-	62%	75%
Reasons:			
Lack of Resources	-	40%	75%
Lack of Female Role Models	-	40%	88%
Not Interested	-	45%	-
Others (Lack of awareness, lack of support of groups within bar politics, lack of ability to travel for networking and campaign due to	-	-	62%

unsafe traveling and transport conditions, and harassment and intimidation by colleagues/staff as the reasons for this)	-	-	88%
Undue pressures and leg-pulling			
Lack of awareness of eligibility and other requirements for candidature, lack of interest in bar elections, and intention to focus on legal practice, lack of support of groups within bar politics, lack of ability to travel for networking and campaign due to unsafe traveling and transport conditions and harassment and intimidation by colleagues/staff	-	-	62%
Prominent Reforms for inclusion:			
Affirmative action including quotas	-	85%	75%
Awareness and Trainings by Bar	-	74%	86%
Bar to organize inclusive networking sessions including conferences	-	66%	57%
Bar to provide safe travel arrangements for campaigning outside the city of residence	-	-	57%

Our findings reveal that 62% of **female lawyers** said they didn't consider running for bar elections of which 40% cited lack of resources and funds to support a campaign and lack of female role models running and winning elections as the reason for not running for bar elections as candidates. 45% of them stated that they were not interested in bar politics and preferred to focus on their legal practice.

88% of the members of the **legal community** believed that there is low participation of women in bar council because of a lack of female role models running and winning elections as well as because of undue pressures and leg-pulling while 75% cited a lack of resources and funds to support a campaign and 62% cited lack of awareness of eligibility and other requirements for candidature, lack of interest in bar elections, and intention to focus on legal practice, lack of support of groups within bar politics, lack of ability to travel for networking and campaign due to unsafe traveling and transport conditions and harassment and intimidation by colleagues/staff as the reasons for this.

85% of **female lawyers** were in favor of affirmative action including quotas for fair representation of women in bar councils, while, 75% of the respondents from the legal community were in favor of affirmative action including quotas for fair representation of women in bar councils.

74% of **female lawyers** believed that in order to encourage more female candidates to come forward the bar could play a role by creating more awareness and training programmes for female lawyers on elections and campaigning, while 66% stated that they could be inclusive in their approach while organizing conferences or meetings amongst stakeholders to ensure representation of women and young lawyers and to create networking opportunities as well as opportunities to engage and have a seat and voice at all tables, forums and platforms where decisions are being made, while, 86% of the members of the **legal community** that responded believed that in order to encourage more female candidates to come forward the bar could play a role by creating more awareness and training programmes for female lawyers on elections and campaigning and by calling for legislative changes for affirmative action/reserved seats and quotas for women and young lawyers, while 57% stated that the bar should be inclusive in its approach while organizing conferences or meetings amongst

stakeholders to ensure representation of women and young lawyers and to create networking opportunities as well as opportunities to engage and have a seat and voice at all tables, forums and platforms where decisions are being made. 57% also stated that the bar could play a role by providing safe travel arrangements for campaigning outside the city of residence to encourage more women to come forward.

The regulatory capture, however, is not limited to the bar councils it seems. It appears to extend to the legal community as a whole that has found strength in its collective organization, particularly post the lawyers' movement of 2007. The unwritten allegiance to tribalism and brotherhood helps to perpetuate the prevailing power dynamics and seems to create conditions for gatekeeping the corridors of leadership so that it remains within the circle of influence of leading de facto groups of lawyers on the ground that have acquired considerable influence and support base over the years leaving little or no scope for those outside the 'groups' from claiming a stake.

In addition to the desire among lawyers to safeguard the power dynamics within their circle of influence, female candidates also reported the challenges arising from discriminatory and misogynist mindset which prevents people from accepting women in leadership roles. In such cases 'derogatory remarks' and 'character assassination' are often employed as tools to discredit, stigmatize and scare the women from contending for these positions. When women dare to challenge the status quo by holding themselves out to contest elections for presidential or other leadership positions they are likely to be met with hostile resistance from their male colleagues simply for stepping out of their place and daring to compete for leadership positions so much so that one of the respondents reported that a senior male lawyer had said that, 'it is better not to cast vote at all than to cast it for a woman'.

Perhaps this explains why in 128 years of the history of the Lahore High Court Bar Association, there have only been 4 women have been elected as its Presidents a total of five times while Asma Jahangir is the only prominent female to have led the Supreme Court Bar Association.¹¹⁰ Pakistan Bar Council, however, continues to be a predominantly male-only body.¹¹¹

One of the respondents very aptly observed and stated that:

'Since the 'political' groups of lawyers play a significant role and influence in nominating, on a de facto basis, the panel of candidates that stand for elections from their 'camp' in each election, they must be pressed to conduct internal reforms to ensure women rise from within their groups internally or that they have a fair and equal chance at representation in these bodies. The extent of male dominance and capture exists in all circles of influence to such an extent that without affirmative actions, no gaps for fair representation can be met.'

We tend to agree with this.

E - No Publicly Declared Commitment to Gender Diversity and Inclusion

There appears to be no open and publicly declared commitment towards ensuring diversity and inclusion by the institutions and bodies concerned with recruitments and appointments in the justice sector within the judiciary, law firms, prosecution, or bar councils, even though Articles 25 and 34 of the Constitution of Pakistan when read together, state that affirmative actions for full participation of women in national life should be ensured. As discussed above, we found that even in sectors where there was a quota for minorities and differently-abled, such as in subordinate judiciary advertisements

¹¹⁰ (n 50) See also

<<https://twitter.com/WomenInLawPk/status/1480891664789118979?s=20&t=CWfvaO0eavXDhOqlnda2Eg>>

¹¹¹'Members', (*Pakistan Bar Council*) <<http://pakistanbarcouncil.org/members/>>

and/or for advertisements for prosecutors, no similar quota for women or gender minorities was applicable.

This is a serious gap given that all criminal cases are prosecuted by prosecutors, and the lack of fair representation of women in the service can impede accessing justice. More so because in 2019 and 2020, women in Punjab faced astonishingly high instances of sexual assault, harassment, rape, kidnapping, and domestic violence. As the Punjab Gender Parity Report 2019-20 shows, gang rape cases rose from 190 to 219 from 2019 to 2020, custodial rape cases rose from 0 to 8 cases from 2019 to 2020, while reported cases of incest rose most drastically, from 19 cases in 2019 to 56 cases in 2020.

As the Punjab Gender Parity Report 2019-20 shows, only 1 woman was appointed as DPP (BS-19) in 2020 whereas in 2018 and 2019, no women were appointed as DPP, reflecting extremely poor gender parity in the higher cadres of prosecution service.¹¹²

The report further stated that the incidence of honor crimes continued to increase. In 2019, 197 cases of honor killings were reported to the IGP, while 237 were reported in 2020, depicting an increase of 20 percent in one year. 4666 cases of assault were reported in 2019 and 4925 in 2020, depicting a yearly increase of 5.6 percent from 2019 to 2020.

With such high numbers of victims and survivors being women and with large numbers of women conflicting with the law, with 734 women incarcerated in Punjab of which the highest number of women were imprisoned in Central Jail Rawalpindi (146 inmates), followed by Central Jail Lahore (126 inmates) and District Jail Faisalabad (87 inmates) and only 1 jail in Multan being for women prisoners only, it is astonishing to note that female lawyers continue to be discouraged the most from pursuing criminal law practice in Pakistan.¹¹³

In our survey, over 80% of female lawyers and law students responded that they were dissuaded from pursuing criminal law practice during their law school by their teachers. 65% of them also expressed that their families were not in favor of them pursuing criminal law because they feared for their lives.

This, however, appears to be more of a perception problem associated mainly with the image of the profession and projection of lawyers and the legal system in media. It is also viewed by some respondents as an attempt to gate keep specific fields so they remain within the male domain as women are pushed and encouraged to take up roles and fields considered softer and more suitable for them based on the stereotypical gender role associated with them such as family laws, intellectual property, etc. One of the respondents lamented this perception and considered it an *'unfortunate notion that women have been made to internalize even though invariably, in family matters, some element of gender-based violence and crime is also prevalent.'*

Apart from a perception based on gender roles, there appears to be no data-backed evidence to suggest why women should be dissuaded from pursuing criminal law; in fact, there is evidence to the contrary. One of the most interesting findings of our study comes with the comparison of the data of two

¹¹² Punjab Gender Parity Report 2019-20, (Punjab Commission on Status of Women, 2021) 231
<https://pcsw.punjab.gov.pk/system/files/PGPR-2019%20%26%2020_13.pdf> accessed 3 February 2022

¹¹³ Ibid 221

criminal law firms that we reviewed, one established and led by a female advocate based in Rawalpindi/Islamabad and the other by a male, Barrister based in Lahore.

It is interesting to see that a field that is generally considered to be suited for men – i.e., criminal law, is the one in which not only is there a firm established by a female advocate, but that all other associates working for her in the firm are also women. Comparing that with the data for the male-led law firm, where only 1 of 4 Associates is a woman.



“My law firm is the only law firm in twin cities which involves criminal law practice and consists of female lawyers. They have equal opportunities to explore. They have enough opportunities to learn and earn both.”

Advocate Huma Jamil Babar

Huma Law Associates –Rawalpindi / Islamabad

Huma Law Associates was established in the year 2015 by Advocate Huma Jamil Babar. It is the only all-female firm in the twin cities established and led by a woman that pursues criminal legal practice and family laws. The firm has eight associates. All of them are women, of which 1 is an intern, 3 are junior associates, 2 are associates and 2 are senior associates. All 8 of them are involved in active legal practice in courts. The firm has an in-house culture of mentorship and professional development. It has an anti-harassment policy as well as a maternity and parental leave policy. It also promotes flexible work arrangements not just due to Covid19 but in general to facilitate its female associates.

Total No. of Male and Female Advocates In Leading Law Firms in Pakistan

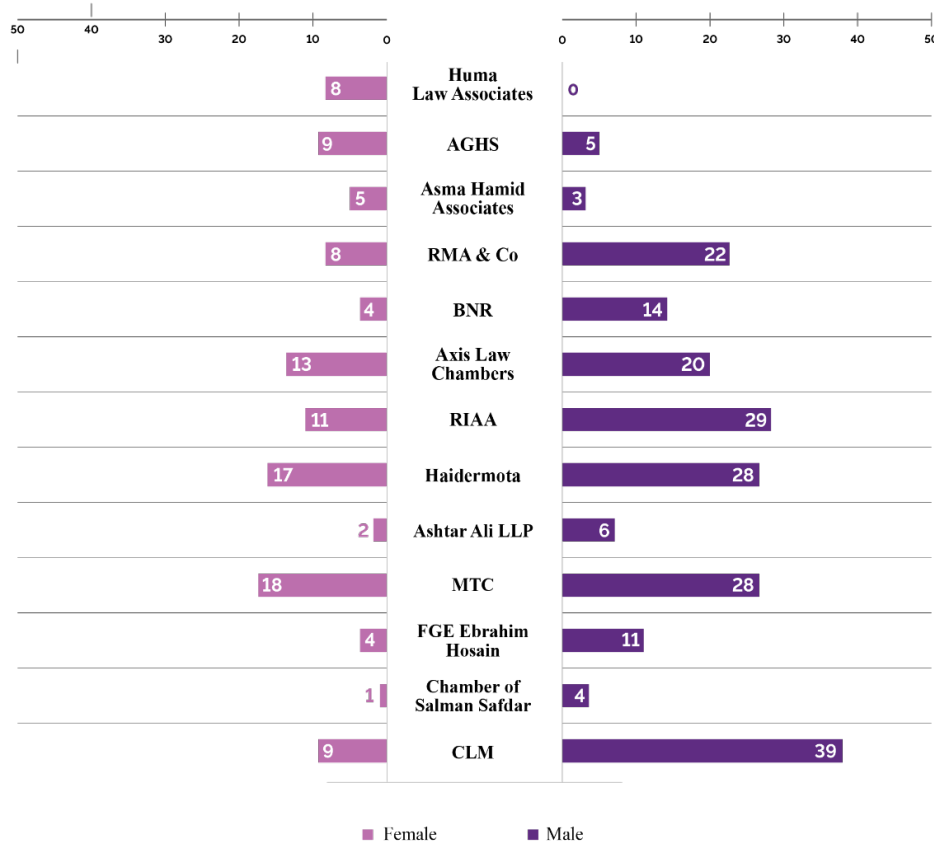


Figure 2 – Total number of Male and Female Advocates in Leading Law Firms in Pakistan. Source: Official Websites of the Firms

AGHS is another leading law firm in Punjab. It is known more popularly as the (late) Asma Jahangir’s law firm. However, all four original partners in the firm were women.¹¹⁴ The firm specializes in family law practice but also takes up criminal cases, particularly those about Gender-Based Violence. Here also, we observed that female associates (64%) outnumbered the male counterparts (36%) despite work being of criminal nature which is thought of as a domain suited for men.

Asma Hamid Associates shows a similar trend in women outnumbering male associates in a female-led law firm. Asma Hamid Associates also handles criminal work. They represent both individuals and corporations in criminal proceedings and specialize in both trials as well as appellate work. They have represented clients before the High Courts and the Supreme Court of Pakistan and have successfully obtained reversal of wrongful convictions in the process.¹¹⁵

In all these instances, we found the stereotypical notion about criminal law as not being suited for females, being challenged. In all these instances, the common element is that these are firms led,

¹¹⁴ Noor Ejaz Chaudhry, ‘The People’s Champion: Documenting Late Asma Jahangir’s Legacy’ (*Lawyer.pk*, 2 December 2020) <<https://www.lawyher.pk/blog/View/The-People-Champion>>

¹¹⁵ Asma Hamid Associates, ‘Practice Area: Criminal’, (*Expertise*) <<https://asmahamid.law/criminal/>> accessed 4 February 2022

established, and managed by women. What our data tells us is that when women are in leadership positions, more female associates join the firms regardless of the area of practice and may even outnumber their male counterparts. Therefore, increasing women's representation through regulation and legislation, centered on ensuring diversity and inclusion, is most likely to address the disparity in the justice sector. One major challenge in the context of regulation of law firms, however, remains. We address that below.

F - No Transparency in the Process and Lack of Regulation of Firms for Basic Rights of Employees/Workers

While there is no requirement to join a chamber or a law firm to pursue legal practice in Pakistan, many lawyers work as partners and set up their firms as partnerships. These can be registered (registrar of firms) or unregistered (oral or by deed) partnerships. More recently, few legal partnerships have gone on to register themselves as a Limited Liability Partnership (LLP) with the SECP as well.

The challenge with firms being established as partnerships is that they remain largely unregulated by the bar councils and are viewed more as private entities each operating under its partnership agreement and internal policies. The affairs of most law firms in Pakistan remain their internal matters and barring a few financial or taxation regulatory requirements, there remains a little state and institutional control over the regulation of the internal affairs of the firm.

Although Section 56 (m) of the Legal Practitioners and Bar Councils Act 1973 empowers the provincial bar councils and Islamabad Bar Council to make rules to provide for the forming and regulation of firms of lawyers by notification in the Official Gazette, there are currently no rules that have been notified as such in Punjab under which law firms could be said to be regulated by the regulatory bodies of the legal profession.

As confirmed by one of the respondents:

'Law firms are not regulated by the professional regulatory bodies in Pakistan as of now. Most of the issues that graduates, in particular female lawyers, face can be addressed if there was a more seamless process for integrating them with better HR policies, however that seems like a far cry given that firms are not regulated and lawyers are not considered employees of the bar council either so there is no protection or regulation as such.'

From this, it follows that there is no code of conduct that law firms have to follow, adopt or abide by and their affairs largely remain a private and internal matter for them to decide. This is also why there is no ceiling or flooring of fee structures and lawyers demand a fee on the market basis as they deem appropriate. Many litigants have expressed dissatisfaction with the practice of lawyers seeking 100% advance payment and then not satisfactorily performing the services. The clients are usually left with little or no remedy as neither are law firms regulated nor are lawyers usually held accountable as a result of the 'regulatory capture' over the regulator.

The fact that firms are not regulated within the profession is not just a challenge in the context of the litigants/clients. From the context of employees and in particular, from the context of female lawyers' advancement in law, the lack of regulation and formal progression routes and structures play a significant role mostly in perpetuating the inequalities and disparity for accessing opportunities for growth in the profession. This is largely because the legal profession is one of repute and years of experience and establishing one's name in the profession is what enhances access to clients.

For women, finding clients and work is more challenging because of the gender stereotypes prevalent in society and the misnomers related to the legal profession being suited to men only. This also appears to connect with the broader issue of women’s agency and empowerment in the society in general as contextualized by one of the panelists in a dialogue on women in litigation held in 2016:

‘The trend for getting more girls to pursue medicine grew when the demand for female doctors arose and even the men in the household felt that women needed to see female doctors for their health issues. For the same reason, you see many more females practicing in family law and other such fields suited for their gender as per the society because that is where the demand lies and therefore, has to be met. When the Pakistani society sees an increase in the number of empowered women in leadership roles, running banks, doing trade, and running factories, for instance, they too will need legal advice and representation. While, I am not saying that they cannot get that advice from male lawyers, but we can expect that empowerment of women; in general, can be a factor that can push the need for more female advocates in diverse fields to meet the growing needs of women in the society in sectors that they were previously not operating in.’¹¹⁶

The panelist seemed to have suggested that there is a high probability that when women advance in the society as a whole, it may lead to an upward trend in creating and opening up more opportunities and space for women in other professions as well, including in the justice sector.

While that remains to be seen, meanwhile it must be stated that although, technically there is no bar on advocates from pursuing their legal practice upon being duly enrolled, however, in fact, many lawyers have to attach themselves to senior lawyers or find work within the firms or chambers so that they can get the opportunity to learn and network.

In that context, law firms and chambers are important steppingstones, learning, and networking spaces for young lawyers. In absence of regulation, however, there are no standard operating procedures, codes of conduct, or internal human resource policies that offer clear entry or progression routes in the firm for employees or encourage the firms to state and implement any commitments to increasing diversity and inclusion within the firm.

Key Findings: Law Firms/Chambers

	Respondents	Law Students	Female Lawyers	Legal Community
Do firms have Formal Recruitment Policies?	91% said no			
Do firms offer Clear Progression Routes?	86% said no			
Do firm websites give adequate information about recruitment, equal opportunity and progression routes?	Only 15% websites mentioned this			

¹¹⁶ Women in Law Dialogue Series Session 2, ‘Women in Litigation’, (2016) <<https://www.youtube.com/watch?v=a32PiGX0VDk>>

Was the process of hiring of professional standards?		57% said no	52% said no	
Should there be a publicly declared process of recruitment/advancement?	88% agreed	46% agreed		
Should there be a Standardized Process for recruitment and progression in law firms?	63% supported this idea	77% agreed	62% agreed	
There should only be minimum standards of the recruitment and progression process in every firm as opposed to a standardized procedure				62% agreed
Should there be open and publicly declared statement on equal employment opportunity or non-discrimination by firms when recruiting or promoting?				100% agreed
Did you find the interview process of the firms in which you applied in accordance with professional standards?			52% said no	
Were you satisfied with the level of access to information available for entry, recruitment, appointment and for mobility from one sector to another in the justice sector?			55% not satisfied	
Is entry and advancement more challenging for women?		53%	67%	50%
Reasons:				
Gender Bias		72%	80%	-
Social role and baggage		60%	68%	88%
Fear of harassment complaints and other liabilities		58%	72%	75%
Women as more 'costly' employees		-	-	50%
Allotment of Chambers	Arbitrary – District Bar Associations			

91% of the **respondents** to our survey revealed that there were no formal policies of recruitment in the law firms which is why neither were they displayed nor shared with the employees. 86% said that there were no clear policies or routes for progression either from entry to partner level positions in the firms.

The hiring and progression largely remain a discretionary, arbitrary, need-based, and informal process in most firms. Progression, in particular, depends on how much 'business' the individual lawyer in question was brought to the firm as opposed to the metric of several years in service. One of the respondents even doubted whether the progression of employees was even an objective of the employer as most employers tended to run their practice as a 'one-man show' projecting and securing their interests and success rather than being interested in developing a culture of learning and growth for collective advancement of the associates working under them. Only 3 firms out of the 20 we sampled for this study had mentioned any clear track and progression timelines on their website.

52% of the **female lawyers** who had applied to law firms stated that they did not find the application and interview process of the firm by professional standards while 57% of the **female law students** who had applied to the law firms said the same. 88% of the respondents agreed that there should be a publicly declared process of recruitment and advancement in the firms and 63% supported the idea that there should be a standardized procedure for entry and progression in law firms.

53% of **female law students** believed that entry and advancement in a law firm were more challenging for females. Gender bias as regards competence and professionalism of women was considered as the leading factor for this at 72% followed by social role and 'baggage' associated with domestic responsibilities of women such as child-care, home, and family as a priority at 60% and fear of complaints of harassment and liabilities associated with providing safe and inclusive workplaces for women at 58%. 67% of **female lawyers** agreed that entry and advancement in a law firm were more challenging for a woman. 80% regarded gender bias as regards their competence and professionalism as a reason for this followed by 72% who stated this was because of fear of complaints of harassment and liabilities associated with providing safe and inclusive workplaces for women and 68% considered that this was because of social role and 'baggage' associated with women domestic responsibilities such as child-care, home, family life as a priority. While, 50% of the members of the **legal community** also agree with the perception that female employees are more 'costly' because of the enabling structures they may require at workplaces for inclusion such as day-care facilities, maternity leave, and benefits, separate toilets, safe workplaces, regulated timings, flexible work arrangements, etc. which leads to less enthusiasm to hire women. For members of the **legal community**, the factors that might hinder female's entry and advancement in law firms, gender bias as regards the competence and professionalism of women and the social role and baggage associated with women's domestic responsibilities such as child-care, home, family life as a priority each emerged as the most prominent factor at 88% followed by fear of complaints of harassment and liabilities associated with providing safe and inclusive workplaces for women at 75%.

55% of **female lawyers** were not satisfied with the level of access to information available for entry, recruitment, appointment, and mobility from one sector to another in the justice sector. 80% of the female law students highlighted that there was a different recruitment process in each law firm. 53% of the **students** considered entry and advancement in a law firm to be more challenging for females, while 50% of the members of the **legal community** believe that entry and advancement in a law firm are more challenging for females. 74% of the **female lawyers** intend to set up their law firms however, 50% of those who do not intend to do so cited a lack of resources as the reason for this.

77% of the **female law students** agreed that there be a standardized and regulated progression procedure/process for entry and advancement in law firms. 46% of them reported that the firm they applied to, had an open and publicly declared statement on equal employment opportunity or non-discrimination. While 62% of **female lawyers** agreed that there be a standardized and regulated progression procedure/process for entry and advancement in law firms. Only 35% of the **female lawyers** reported that the law firms they applied to, had an open and publicly declared statement on equal employment opportunity or non-discrimination. 88% of the members of the **legal community** agreed that law firms should have a publicly declared and structured process for recruitment and advancement while 100% agreed that they should have an open and publicly declared statement on equal employment opportunity or non-discrimination. However, 62% of members of the **legal community** also said that there should only be minimum standards for the recruitment and progression process in every firm as opposed to a standardized procedure.

It appears that due to a lack of adequate regulation, there is a lack of accountability of the recruitments and appointments in the judiciary, law firms, prosecution service, and bar candidates from the diversity and inclusion aspect. There needs to be more transparency and publicly declared processes for such recruitments and appointments, whether they be for prosecutors, or fresh appointments or promotions in the judiciary. In the context of law firms, the inadequacy of regulation also leads to a lack of any human resource policies regarding the rights of employees/workers such as regulated working hours, minimum pay, equal pay, non-discrimination, clear entry and progression track in the

firm and a conducive working environment in general. Currently, this is mostly discretionary and lacks transparency.

The reason why law firms have such a central role in the entry and advancement of lawyers is that as mentioned earlier, firms are hubs of work opportunities and clients, especially in the initial and early days of the career when a young advocate is less likely to find their independent clients or work. In absence of a stipend or any financial security, the young advocates have to depend on finding work with their seniors or placements at law firms.

Through these platforms, when they can work on cases and appear before the courts, they not only get the requisite experience and chance at networking but also can show their attendance in court or their names as counsels in any judgments that get reported in the cases on which they are working during this time. These reported judgments and attendance in court serve as important aspects for progression in the legal profession as a whole because when applying for a license of Advocate Supreme Court, a list of 15 cases of the applicant in which he/she has appeared as counsel is required to be filed along with other documents.¹¹⁷

Likewise, when ‘active legal practice’ experience for positions in the subordinate judiciary is being considered, even then evidence from actual legal practice and court appearances and attendance is required. The same is true for the Chief Justice to be able to nominate a lawyer for a vacancy in the High Court or the Supreme Court, he must know of the advocate.

As mentioned above, advancement in the profession in various sectors, whether as advocates of the Supreme Court, as candidates for bar elections, or for being eligible for being nominated for the higher judiciary, etc. is centered almost exclusively on the ability of the candidate to show ‘active legal practice’. Respondents described this as narrowing a pool and demanded that more classes of legal professionals such as those from academia should be included within the purview of the pool of eligible candidates via legal and constitutional amendments. Until that happens, the regular presence and practice of the advocate in question in the court before different benches aid the chances and opportunity of being considered for such appointments. **The law firms, therefore, play a central role in being the platforms from which advancement in the legal profession as a whole can be accessed.**

If these platforms do not provide equal opportunity to women to access the opportunities for advancement in the profession say by not encouraging them to pursue litigation, then they not only remain unable to progress within their firm but also remain unable to advance in other sectors of justice for instance, in the judiciary or as Advocates Supreme Court. The progression in the profession is, therefore, all linked, and the law firms are the gates of access for it.

The majority of law firms in Pakistan are male-led and male-dominated with no female reaching partner level positions. In recent years a few women-led law firms have been established by women, but they remain negligible in number. Of the few where women do reach senior managerial positions or decision-making roles, they remain outnumbered by their male counterparts. Women also tend to have longer ‘probation periods’ as compared to their male counterparts in sectors that are not regulated such as in law firms etc.

¹¹⁷ Rule 107, Legal Practitioners and Bar Council Rules, 1976

Law has historically been a male-dominated profession, but it is very interesting to note how much this dominance is manifested in practice even though in law schools, an increasing number of female law students are enrolling in the law programs but as the PCSW report shows, only 10-14% women are enrolling as advocates and joining the legal practice.¹¹⁸ If at this entry stage, women are not encouraged or facilitated, then advancement in the justice sector would also be impacted accordingly. Since law firms are at the very base of the progression in the justice sector for other roles as well, therefore, fair representation at that level seems to be of considerable importance.

For this reason, female lawyers also identified that the current ‘apprenticeship-based’ model whereby an associate learns on the job by shadowing his/her senior inherently works to the disadvantage of women’s learning and growth. They would prefer that it be replaced with a ‘training-based’ model instead of formal courses and continuing professional development requirements pegged to a renewal of license so that they have an opportunity to learn and pursue legal practice on an improved footing. Most female respondents supported this assertion by expressing their willingness to be trained and attend workshops. They demanded training and capacity building in improving soft skills including advocacy skills, confidence building, effective communication, and the like. Shifting to a training-based model, therefore, appears to offer several opportunities for advancing women’s chances of being recruited and/or appointed into the law firms and from there, as judges or as prosecutors, etc.

Chambers in District Courts

In addition to the firm model based on partnership, the District Bar Associations (DBA) have the power to allot ‘chambers’, that are available, to advocates registered with them as members. District Bar Associations are present in each district of Pakistan.

They are autonomous bodies. They are governed by the Committees of the elected representatives of the respective districts. The elections are held annually each year. Punjab has 36 districts of which Lahore Bar Association is the largest District Bar Association.

Chambers are the offices/small sitting places in or near the district courts from where the lawyers can operate, pursue their legal practice, meet and entertain their clients, get briefings and conduct their affairs.

For those who are unable to afford to set up their own offices or firms, these Chambers play a critical role in connecting the lawyers to the clients and ensuring that they can work and progress.

However, the District Bar Association allots the chambers according to their own internal rules and policies. They may consider merits and rules like seniority and the overall strength of application to determine whom to allow the chamber to.

The ultimate decision regarding allotment, however, remains at the discretion of the District Bar Association.¹¹⁹ As explained by the respondent:

‘Whenever new chambers are built the Bar Association invites applications from lawyers through notification. Interested lawyers then apply and pay the money to the bar, if their application is successful. However, usually the more influential male lawyers get the allotments and in absence of any affirmative actions, the applications

¹¹⁸ (n 112) 231

¹¹⁹ This information is based on a telephonic interview conducted on February 4, 2022 with a lawyer based in Rawalpindi/Islamabad.

of female lawyers usually do not get the approvals. This impacts their ability to operate because the rents for private offices are too high and women's income and earning capacity much lower than their male counterparts.'

The discretion that the District Bar Association has in allotting the chambers has, therefore, proved to be another challenge for female advocates and other underprivileged groups in the context of their entry and advancement in the legal profession. Therefore, a legislative amendment to the rules may address the issue of chamber allotments and is a likely way forward to address this gap.

G - No Application of Pro-Women Laws to make the Sectors Conducive and Sensitive to Needs of Female Lawyers

Even though harassment, gender discrimination leading to a loss of access to equal opportunities, and stereotypes associated with gender emerged as the most common concern among female respondents, in that, 64% of female lawyers stated that their apprehensions regarding harassment, discrimination, and unsafe working environment, etc. did come true after entering in the profession, we found that the legal profession and justice sector is set up in a way that is not sensitive to needs of women. In that, there are no laws that extend the maternity leave and benefits to cover law firms or even women working in-house in different companies because the existing law maternity benefit and leave ordinance in Punjab extends protection only to women workers in manufacturing processes, etc. It does not extend protection to female professionals. This is a major gap that needs legislative amendment to the Punjab Maternity Leave and Benefits Ordinance 1958.

Likewise, there has been little or no compliance with the Protection of Women against Harassment at Workplace Act 2010 (as amended in 2022) that calls upon the organizations to display a code of conduct and set up an internal inquiry committee with female representation.

To address some of these more serious structural challenges related to women's safety and their rights as employees, it is pertinent to adopt legislative amendments to existing laws so that the protection can be extended to women in the justice sector. Perhaps a mapping exercise to note the extent of applicability and compliance of these laws in the justice sector in more depth can be a good starting point to address this matter as well.

To conclude, all sectors of justice that we studied currently do not adhere to international, legal, and constitutional laws and principles rooted in transparency, and equal participation, particularly in decision-making roles and affirmative action. This is a gap that can be addressed by legislative and constitutional amendments in relevant and respective laws or by, passing new laws where none exist as in the case of law firms and chambers. In addition to that, it is important to approach all questions of reform with the underlying objective of ensuring diversity and inclusion for which there needs to be a conscious, clear, and open commitment coming from an institutional level in all sectors of justice.

ii) Structural and Invisible Gaps

Gaps:

- A. Discouragement from Active Legal Practice
- B. Lack of Guidance and Information
- C. Lack of Networking Opportunities for Women
- D. Financial Barriers and Constraints Resulting in Unequal Opportunities
- E. Gender Bias, Gender Roles, Stereotypes, and Discrimination
- F. Gap between Legal Education and Practice
- G. Safe Mobility and Travel
- H. Negative Perception of Legal Profession and Rising Incidences of Violence in Courts
- I. Lack of Enabling Structures that can Facilitate Women/Working Mothers
- J. Professional Tribalism and Influential Role of De Facto Groups

Actions: Addressing Structural and Invisible Barriers

1. Strengthen female lawyers through capacity building, funding opportunities and investment in enabling infrastructures
2. Address information gaps in liaison with law schools, bar councils, prosecution, judiciary and other stakeholders
3. Facilitate access, inclusion and retention of women
4. Increased gender sensitivity trainings and workshops to address bias with all stakeholders including faculty at law schools
5. Ensure safe mobility
6. Digitization of justice sector

The structural and invisible gaps have mainly been derived from the responses of the respondents to this study. In that sense, these are authentic reflections of the apprehensions, experiences, and perceptions of the respondents comprising female lawyers, female law students, institutional and office bearers as well as members of the legal community including both male and female legal professionals. Where applicable, the authors of the study also drew upon their observations and experience in this field to contextualize the barriers that hinder access and advancement of women in law. These have been summed up in the annexure below.

While the previous section detailing legal and constitutional gaps assisted us in identifying the areas in need of legal and constitutional reform, the structural and invisible gaps have helped us in understanding more broadly, the socio, economic and other factors that likely play a huge role in perpetuating the current gender disparity in the justice sector. Without a holistic appreciation of these key socio, systemic and latent challenges that hinder women's equal access to the opportunities in the justice sector, no substantial efforts for achieving fair representation would likely be effective. In that, it is not enough to achieve equality and inclusion only on paper via legal and constitutional amendments, but it is more important to address these wider challenges of creating an enabling environment for fair representation to be possible.

It was very interesting to observe the difference in the perceptions between male and female respondents to questions about challenges in the profession for women and the need for affirmative action. Over 90% of the female respondents including female law students agreed that women by their gender faced unique challenges in the entry and advancement in the legal profession. For 41% of female law students, and 61% of female lawyers, gender was a consideration in choosing their area of study and/or career trajectory and area of practice. However, the majority of male respondents insisted

that there was ‘open competition’ in the profession as there was no law that barred women from competing for any positions.

This view appears to be based on a technical reading of the laws and rules which do not expressly discriminate against women, but it does not appear to factor in the practical challenges that hold women back. We, however, found that open merit was not the only basis on which recruitments and appointments are being made in the justice sector. In many instances, they are based on the arbitrary exercise of discretion, without transparency, or are politically motivated appointments as in the case of appointing the Prosecutor Generals. Even in instances where there is open merit, it is unlikely to ensure fair representation till such times that the structural and invisible gaps are bridged. For instance, we found that bar elections are heavily influenced by de facto groups of lawyers that play a key role in pitching candidates for various offices for the bar elections. In absence of affirmative provisions, limited resources, general perceptions of women in the legal profession, and latent gender biases, these groups usually end up supporting male candidates from within their ‘camp’/ ‘group’. This brotherhood/tribalism between de facto groups leads to decreased chances of women succeeding in bar elections because of the disparity in the number of male and female advocates in the profession that are eligible to vote.

The capacity of female lawyers to win in elections is further impaired because of a lack of access to equal financial resources and funding for running successful election campaigns. **80% of women raised concerns about unequal pay and unequal work.** In one way, these issues are all connected. Given that most female respondents expressed that they do not have access to the same litigation opportunities that translates into lesser pay and consequently, fewer promotion and advancement opportunities. At any given time then women have lesser earning and growth opportunities than their male counterparts leaving them with even fewer opportunities to participate in additional activities involving expenses such as bar elections. This is further compounded by the issue of women’s inability to travel as freely and safely to other cities, to district bar associations, and for other activities in connection with the elections.

The justice sector historically has had a very masculine outlook, not just because of male dominance in key positions but also because of the norms and systems that fail to understand and accommodate women’s needs. For instance, the profession demands, and rewards long hours clocked in the office but offers no supportive infrastructure or policies such as maternity leave, day-care allowance or facilities, etc. that can enable working mothers to sustain their jobs. Even basic facilities like separate and equipped toilets for women are not freely accessible in many places. Because the structures, rules, and policies ensuring the right to decent working conditions and basic facilities are not in place and law firms are not regulated to ensure these basic rights, female candidates are often seen as a liability that comes with their ‘baggage’ that most employers are not interested to carry.

69% of **female lawyers** that we interviewed agreed with the perception that legal practice does not provide equal space to female lawyers while 50% of members of the **legal community** agreed with the perception that female lawyers do not make for good employees because of the ‘baggage’ associated with their gender role and sensitivity around their safety at the workplace.

Let alone the supportive infrastructure and policies, many firms are skeptical of hiring female employees to begin with due to perception and gender biases. As a few female respondents highlighted that discriminatory interview questions are routinely asked at the time of recruitment of women about their family life and marriage plans. It is often presumed that female employee turnover is high post

their marriage and/or pregnancy and children – both of which are fundamental rights and expected gender role of women in the society. However, neither the families nor the in-laws, the society, or even the profession are usually prepared or willing to play any enabling role in ensuring the work-life balance that is required. Both marriage and family life are fundamental rights of all employees and not just female employees and yet, due to a lack of notion of shared responsibilities at home in the society, a man is usually compensated with a higher salary for taking on the additional responsibility of the family/marriage/children but the women, invariably end up losing their jobs for want of/lack of supportive infrastructures and policies like flexible work arrangements, creche facilities, day-care allowances, or other facilities. The critical role the families play in making or breaking a career of a woman was also highlighted by several respondents, both male and female.

A respondent, who is a senior male advocate acknowledged some of these barriers that women have to face. He said:

'Legal Profession is challenging; lawyers are often expected to put in long hours etc. Female lawyers certainly get the shorter end of the stick because of their gender and the gender roles they are expected to perform, so a shift in social attitudes is also needed to understand the challenges professional women face in their personal lives and how having social/family support system improves their professional prospects.'

What is even more interesting is that we found that the female turnover perception is also a bit over-hyped and appears to stand out more because of their gender as compared to the turnover of male employees. In that, we found that majority of male associates switch jobs or establish their practices either in partnership with their peers or as independent practitioners within the first five years of their entry into the profession. In this case also, the male associates 'quit' their existing job to move however, this does not seem to be viewed as critically by employers as female employees having to leave their jobs for marriage/family is. Thus in a situation where both a male and a female quits a law firm, a male associate's resignation is looked upon as upwards mobility and is not penalized or held against the gender but women's resignation for say marriage or family, even if temporary is viewed as a liability and is held against her gender.

As one respondent explained:

'There are law firms that appear to have an unwritten policy and rule to not hire women at all. Some of those who do interview female candidates remain skeptical of their commitment to the profession and may ask sexist questions about family and marriage plans to assess whether to hire her or not or to decide how much to invest in her training. The employee turnover is high as it is in the legal profession with many male counterparts also leaving law firms, they enter within the first 2-4 years to start their practice however, women's family responsibilities are always viewed more skeptically than a man's opportunistic stint at the law firm no matter how short that is. Somehow, that is acceptable mobility within the profession because the man is 'progressing' onto establish his independent practice but a woman's break from the profession for the responsibilities the patriarchal society, that serves the men, imposes on her, is viewed as a waste of time and resources. The fact that there are no enabling structures to support the working woman/mother further adds to this conundrum. Everyone expects women to 'come forward, be more 'professional' and 'committed' but no one is interested in discharging their institutional responsibility to create the enabling structures that can welcome, retain and sustain women in the workforce.'

Another respondent explained that perhaps it is not the female candidates themselves that law firms are hesitant to hire, but the lack of agency that they may eventually have in the society post their marriage. The respondent seemed to suggest that even the employers are aware of the patriarchal structure of the society that prevents women from exercising agency over their own decisions and life and since they cannot be sure what kind of a family they will marry into, therefore, it is a question of investment and expending of resources on training their associates which they have to gauge.

Ultimately, it has to make business sense for them to hire and invest in a trainee. This seems to confirm that the larger question of women's agency and empowerment in the society directly breeds the gender biases against them in the profession and has a direct bearing on their career and growth as conceded by some of the female lawyers who seemed to also share the concerns regarding their agency post marriage.

From the perspective of women, choosing the law firm/workplace is an equally difficult and extremely important consideration. There are the overriding considerations that they must deal with when pursuing career opportunities in law such as accessibility, safety, attitude, and acceptance. They face immense difficulty in finding a suitable law firm/workplace where they feel relatively safe and can freely access. Whom they work with and where can and does impact their prospects and their safety. If they find a place with good mentors and enabling environment, they can and do excel and are guided well, treated at par and on equal footing with their male colleagues. Some more recent, younger, progressive law firms nurture such a culture of respect, safety, diversity, and inclusion. However, such places are few and far between. This makes it very difficult for most women to find a workplace that meets their needs and harnesses their full potential as a talent resource.

The justice sector in Pakistan is also structured in a very outmoded fashion. It has failed to take benefit of the modern technology and digital tools as much as it should have. These outmoded judicial systems that offer little or no opportunity for developing flexible and/or remote systems to deal with cases and/or argue them before judges is another factor that prevents innovation and development of avenues that might make the profession more accessible and equal for women or those that are unable to travel or sit long hours in the office. A respondent had an interesting observation to share about the impact of Covid19 prompting reliance on digital tools in the legal profession. She said:

'We had been advocating for flexible work opportunities and remote working structures for many years for promoting diversity and inclusion but to no avail; then covid19 happened and work from home became a necessity. We saw that even the firms previously resisting the motion, came around to develop effective alternatives when they were forced to. Covid19 has forced people even in the archaic justice sector to see the power of adapting to technology. Even though the use of technology has still not been adopted to the extent that is desired, the pandemic nevertheless, enabled people to innovate where they could when they had to, which our gender advocacy of many years could not. This was seen most profoundly in a few international arbitrations involving parties from Pakistan that were shifted online in wake of the pandemic. It may have taken even longer before any noticeable progress in this sphere was made here had it not been for the necessity created by the pandemic but that is the whole point, it shouldn't take a pandemic to make institutions realize the benefit of digital tools and its role in promoting efficiency and accessibility.'

Having said that, however, the legal profession is said to have one of the highest dropout rates with most law graduates quitting active legal practice in the first two years of them graduating. A sizeable segment of those who graduate pursue alternative career options in law or related fields. Very few remain committed to pursuing litigation and are active in practice (of which the majority are men). Most women pursue in-house positions, research, teaching, human rights advocacy, or join corporate law firms and do advisory, transactional, or opinion work. Others attempt to pursue a career in the judiciary after completing two years of practice.

The reasons for these dismal numbers are, however, not just marriage and lack of agency. The justice sector appears to suffer from a 'retention problem' in its pool of talent and human resources. This is because of a lack of financial security, lack of transparency of criteria for recruitments and progression, arbitrary and discretionary structures benefiting the ruling class, nepotism, and

discrimination based on class and role of networking, family background, and contacts in entry and upward mobility in the profession. Several respondents indicated that graduates from private universities or with foreign qualifications were preferred at established law firms indicating that it was difficult to find suitable jobs for those with local degrees.

Lack of regulation of the profession has also meant that there is a lack of structures that promote continuing professional development (CPD) of the people in the profession. There appears to be no will to invest and train young employees as no formal training programs are held or conducted that can add value to a lawyer's skill set. Some independent workshops and seminars have started being organized and the legal education committee of bar councils has also started some educational programs for lawyers, however, there are no certified programs or official CPD requirements with which lawyers must comply for renewal of their licenses. Some respondents also highlighted that there was a gap in the legal education and legal practice in a way that their law school years did not prepare them for the skills and knowledge required for active legal practice and highlighted the need for developing curriculum or opportunities that could interlink and interconnect the legal industry with the legal education providers.

Curiously, many respondents stated that they had to spend 'long but largely unproductive hours at the start of their practice' which led to a lot of discouragement and a lowering of the morale to pursue the profession. As one of the respondents said:

'The profession suffers from lack of professionalism'.

Some also highlighted that younger lawyer were treated more like personal assistants doing administrative and secretarial tasks for their seniors as opposed to being given any real opportunity to learn and grow as legal associates. They highlighted the disconnect in the work they were qualified to do vis a vis the tasks they were expected to perform.

As an occupation, the justice sector scores poorly on the work-life balance scale, often being criticized for requiring long unproductive hours without any weekends. The lack of regulation of timings and salary that can be commensurate with the hours put in has led to an increased unease among the younger lawyers in particular who have started demanding that basic pay and timings be regulated. The respondents also highlighted how underpaid the profession was forcing people to quit and pursue opportunities that could help sustain them. This is because there is no stipend or fund for young lawyers and no laws and policies that can regulate this either. Law firms and proprietors have a lot of discretion in determining the salaries if any at all. One of the respondents wished to find more 'jobs' and not yet another 'internships' because internships are usually unpaid. The combined result of, unpaid labor with little or no learning and growth while on the job often results in young lawyers being discouraged and disgruntled from the profession very early on. The respondents also highlighted that the probationary period for women tends to be longer and they must overcompensate and work twice as hard as their male counterparts to be taken seriously in the profession.

For women, however, the discouragement starts much earlier. From their homes, and from the time they are in law school, from their teachers who constantly mostly advise them to avoid going to courts and pursue alternative/softer career paths instead. Even if rendered in all goodwill, such advice can dissuade many females from pursuing legal practice that impacts their chance of advancing in the justice sector as a whole. Another layer of discouragement should a woman insist on pursuing practice comes in the shape of limiting themselves to specific fields like family law that are 'considered' suitable for women. They are advised to not pursue harder fields like criminal law as those are in the

‘domain of men’ and better suited to their traits. The gendered positioning and division of areas of legal practice into feminine and masculine are all social constructs and they inhibit women’s access and advancement in these spheres disallowing them to explore for themselves their full potential as ‘professionals’ in the profession.

‘Discouragement’ has also been explained as a ‘tactic to evade competition’ by one of the respondents. She explains that the legal practice culture is premised on a reciprocal understanding of benefits and opportunities in the profession. Women are seen as a hindrance in that equation and therefore, men prefer to gatekeep the positions that an advocate is bound to engage with in active legal practice. From court staff to registrars, lawyers and judges, are all positions that are dominated by men in the court structures save the GBV court where female staff is hired by in accordance with gender-sensitivity guidelines.

Given that it has been established that where women are in leadership roles, female advocates have taken to practice in all fields the firm is engaged in including criminal law, therefore, it must be asked, whether women are not exploring harder fields due to their inhibitions or are they being systemically denied opportunities and access to those fields by perpetuating the gender roles concerning different legal fields?

Another illuminating aspect of this study relates to the busting of the myth surrounding the lack of interest among women to come forward. 75% of our **respondents** said that they never contemplated quitting at any point. 74% of **female students** intend to pursue litigation while 79% of **female law students** said they would consider a career in the judiciary. Of those who said that they would not consider the judiciary as a career, lack of information about process, procedures, and requirements emerged as the main reason for 35% of the respondents followed by lack of role models (29%) and lack of transparency in nominations and appointments process of the superior judiciary (24%). This figure rose to 50% in the case of **female lawyers**. Of those who didn’t want to consider judiciary as a career, citing lack of transparency in nominations and appointments process of the superior judiciary as one of the prominent reasons for not wanting to pursue judiciary at 45%, while 36% said that it was because they didn’t have any strong links, political background, chamber, group or family name.

Do Women Lack Interest and Commitment?

	Respondents	Female Students	Female Lawyers	Legal Community
Did you fear or experience some form of harassment or unprofessional behavior in courts?	95% of female respondents said yes	-	-	-
Did you contemplate to quitting law at any stage?	75% disagreed	-	-	-
Do you intend to pursue litigation?	-	74% said yes	-	-

A career in judiciary?	-	79% said yes	-	-
Prominent factors for NOT pursuing judiciary as a career:				
Lack of information about process, procedures, and requirements	35%	-	-	-
Lack of female role models	29%	-	-	-
Lack of transparency in nominations and appointment process of the superior judiciary.	-	24%	50%	45%
Didn't have any strong links, political background, chamber, group, or family name	36%	-	-	-

The reason women face discouragement from home and their families from pursuing active legal practice are also rooted in external factors such as the negative 'image' of the legal profession and of the lawyers in and through the media. The incidents of violence against female lawyers and unsafe working environment, long hours beyond 'curfew' times of most women to be home by, sexual harassment and general concerns for safety of women in a profession that is extremely adversarial in nature have added to the overall perception that courts and by extension public places are not the likely places for women for their own 'safety'.

95% of **female respondents** confirmed that they feared or had experienced some form of harassment and unprofessional behaviour in the courts whether in shape of staring, cat calling, stalking or actual violence, physical force or verbal assault. As reported by some of the respondents, one of the most common issues attached to women who try to shatter ceilings is the corresponding character assassination that they have to face at the hands of their male colleagues. This is another tactic to keep women out and to threaten and intimidate them from reclaiming their space in the profession.

Along with this discouragement which many students have highlighted, there is the added challenge of lack of access to proper information and awareness that can facilitate young lawyers in planning their career trajectories. More than 75% of the **people who responded** to our survey said that they had no awareness about joining the prosecution service and its application procedures. Likewise, for all the aspects of recruitment and appointments that remain at the discretion of any one institution or office, a similar disconnect is felt and it is argued that the basis for nominations for appointments or promotions of the judiciary for instance is not clear. **No satisfactory career counselling services were reportedly being provided in most law schools that can help young students explore the fields and opportunities in law or help them develop softer skills such as communication, presentation, confidence, public speaking, etc. In a few private schools, however, moot courts and other competitions are held that facilitate the students who participate, but no formal training on these skills for all students is mandated by the degree-awarding institutions, and no formal graduate placement scheme has been launched by the bars either.** Respondents also stated there was undue delay in issuing licenses by the bar.

Our findings also reveal that a lack of information and guidance can result in broadening the parity. This has especially been observed in the dearth of information for the examination process and eligibility for subordinate judiciary and more significantly, in the prosecution sector.

Key Findings: Prosecution Service

	Law Students	Female Lawyers
Did you consider being a prosecutor?	64% said no	
If not: Reasons: Lack of information	48%	82%
Can Prosecution Service be more inclusive by conducting awareness and training sessions in law schools?	80%	73%
Can Prosecution Service be more inclusive by introducing enabling structures?		46%
Can more outreach programs build the interest of applicants toward prosecution service?		34% agreed

64% of the **female law students** said they didn't consider being a public prosecutor. Of them, 48% cited the lack of information on process, procedures and eligibility, etc., as the main factor for not considering prosecution as a career option.

82% of **female lawyers** had never applied to be recruited as public prosecutors because of a lack of awareness regarding their role and application procedure.

80% of the **law students** believe that the office of the Prosecutor General can be more inclusive in its approach to recruitment by conducting more awareness and training sessions in law schools for female students and educating them about the role of prosecutors as well as the application process. 73% of the **female lawyers** believe that the office of the Prosecutor General can be more inclusive in its approach to recruitment by conducting more awareness and training sessions in law schools for female students and educating them about the role of prosecutors as well as the application process. 46% call for putting in place enabling structures such as safer and gender-sensitive workplaces to make the prosecution service more inclusive while 34% highlighted the need for more outreach programs to build the interest of applicants towards prosecution.

It is hoped that work on bridging this information deficit would be initiated and we would see increased interest among female law students and female lawyers to pursue a career in prosecution service as a result of this.

It has been the objective throughout this study to identify the factors hindering fair representation in the justice sector within the broader and larger context of structural and invisible impediments in addition to the legal and constitutional gaps so that a holistic and comprehensive understanding of the way forward can be developed. This study shows that steps at multiple levels are required to address issues of fair representation in the justice sector. It is the opinion of the authors that while legislative and constitutional change may be required for affirmative action, which may or may not be forthcoming; meanwhile, multiple interventions in a structural, administrative and social domain can be driven at the policy and practice level to achieve a degree of operate equality in the field and to promote more inclusion and diversity for fair representation in the justice sector.

Concluding Observations

This study looked at the legal profession and the justice sector with a gender lens to identify the factors that hinder the fair representation of women in the justice sector in Pakistan. In doing so, it also looked at the existing disparity between the number of men and women in different sectors of the justice system and attempted to identify what ‘fair representation’ would mean in the context of the justice sector. It was argued that fair representation is proportional representation in terms of population that balances the historical and structural inequities.

In the case of Pakistan, this stands at almost 50% since women make up half the population in the country. Accordingly, we calculated what would be fair representation in the justice sector based on the difference in the percentage increase required for proportional representation of women in each sector vis a vis the existing percentage. Taking 50% as the benchmark, the results indicate that there is a need to increase the representation of women in the subordinate judiciary by 35%. In the High Courts by 45%, in the Supreme Court and the Bar Councils by 48% each, 38% for Advocates, 35% for Prosecutors, and 50% in the composition of the Judicial Commission of Pakistan.

In addition to that, this study comprehensively explored not just the legal and constitutional gaps that may hinder women’s advancement but also attempted to identify the structural and invisible barriers that contribute to widening the disparity in the representation of men and women in the justice sector.

These include amongst others, lack of affirmative action and commitment to gender diversity and inclusion, anachronistic laws and rules that lay stress on professional qualification as opposed to more democratic values such as diversity, inclusion, and representation, and hegemonic concentration of arbitrary powers in single/institution or offices responsible for recruitment and/or appointments, lack of effective regulation of the justice sector and regulatory capture of the regulatory bodies due to the conflation of regulatory and representative roles of regulatory bodies. It also includes factors like gender roles and gender bias being superimposed on female law students and female legal professionals that result in them being discouraged from pursuing fields perceived to be suited for men or from being hired for active legal practice.

Importantly, we found that the lack of accessible information regarding recruitment and appointments in different sectors of the legal profession and the slower progression of the system towards digitization, which could lead to more flexible opportunities for women and access to information were also key factors contributing to the current gender disparity in the justice sector. Women also cited lack of resources, wage gap, trust gap among potential clients to engage women for their cases, and fewer networking and growth opportunities as further reasons that make it less enabling for women to have a level playing field with their male counterparts, such as when it comes to setting up law firms or standing for bar elections.

The role of law schools and legal education was also scrutinized to illustrate that the current legal education system does not prepare students for active legal practice. This gap in education and practice impacts more women because the profession still follows the ‘apprenticeship model’ for learning on the job which men are better able to access due to more networking opportunities and acceptance of their gender in the field as opposed to a ‘training-based model’ that ensures institutionalized skills-based training for all on equal terms.

During the course of our research for this study, we found that most men in the profession, particularly those in leadership roles, fail to acknowledge the structural and invisible barriers faced by women and deflect responsibility on women to show more commitment, more thick skin and adjustment to excel in the profession. On the other hand, an overwhelming majority of women and some men increasingly brought to the fore the poor working conditions and raised questions about the quality of the work environment, elite capture, nepotism, unregulated timings, exploitation, and the rising financial insecurity in the profession.

In addition to that, women also highlighted the concerns regarding safety and lack of enabling infrastructure catering to the unique needs of women such as separate toilets, ramps, day-care arrangements, maternity leave and benefits, safe mobility and transport, etc. In many ways, therefore, it appears that apart from a gender struggle, it is also a struggle for decent work and basic rights as workers and employees, something that the women's rights movement and labor rights movement have been striving for decades.

Interestingly, 33% of the members of the legal community pointed out that a female's role, performance, input, success, and contribution at work should not be gauged under a male lens. This is because the norms and rules in the profession have largely been developed based on male experience and therefore, are much more suited to them and their position in society. Such norms, practices, processes, and rules fail to take into consideration the structural and invisible barriers faced by women in the society which come from strong notions of gender roles and biases, and therefore, they argued that a woman's success in the profession should be measured under a lens more sensitive to their gender.

As regards the need for affirmative action for representation, respondents highlighted that in mainstream courts, the staff, registrars and other administrative positions are also usually occupied by men save for GBV courts where a conscious effort to introduce female administrative staff members was made. The majority of the respondents, particularly women, were in favor of affirmative actions for increasing women's representation in law, including via quotas and reserved seats in all sectors and leadership positions. A few male colleagues also supported this however, some advised that women should not partake in bar politics. A women's quest to compete for leadership positions, particularly in bar elections appears to be resisted also because bars are too politicized in the larger scheme of affairs, reflecting the interest of different political parties therefore, unless a woman fits the bill, her attempt to lead/contest bar elections is likely to be zealously resisted.

During our research for this study, we found that most of the female respondents viewed this profession as a means to contribute to society and saw it as a service beyond their personal growth and advancement. The majority of female lawyers and law students included some form of social service as part of their objective for pursuing law. In addition to developing stronger clientele, and investing in their learning and growth, several female lawyers and law students expressed an intention to offer pro-bono legal services, work towards ending discrimination, offer free legal aid and contribute towards educating other women about their legal rights and remedies. Therefore, ensuring more inclusion of women at both entry and advancement in the legal profession has the potential to contribute to beneficial outcomes for access to justice at large.

In addition to that, we found that female respondents showed a strong inclination to learn and participate in training workshops and expressed the need for them to be conducted. They stressed that workshops should focus on developing interpersonal skills, and business development such as on how

to set up and run a law firm, how to handle clients, etc, on the importance of bar politics, and on running a successful election campaign for instance, in addition to the usual professional development workshops and sessions.

From this, it follows that it is crucially important to take into consideration the structural and invisible barriers as highlighted by the respondents to understand that legislative and constitutional amendments and even the pro-women laws are not in themselves sufficient to address the issue of fair representation of women in the justice sector and that a more holistic and socio-economic perspective will have to be adopted for any reforms to ensure gender diversity and inclusion in the justice sector. In this regard, we present our recommendations as follows:

Recommendations

The following recommendations are based on the extensive primary and secondary research conducted as part of this gap analysis. They are divided into two segments. In the first we present the recommendations made by the respondents to the study based on our primary data and in the second, we share policy recommendations based on our overall experience, insights and international best practices based on our secondary research.

A. Recommendations by Respondents

1. The gap between legal education and legal practice should be bridged in law schools. Proper training and preparation for legal practice should be part of the programme like a house job is for medical profession. There should be formal graduate placement programmes through which linkages can be established between academia and the industry. Softer skills like communication and confidence should also be focused in the trainings.
2. A fund for supporting young lawyers in the first two years of their practice should be established.
3. Workplaces such as law firms and chambers must have policies that cater to women and their needs including flexible work arrangements that focus on 'output driven' model as opposed to a 'clocking in of hours' model, parental leave, travel allowance and zero tolerance policies for harassment, threats and intimidation etc.
4. There should be media campaigns to encourage more women to join legal profession which could help change the perception around it.
5. There should be more regulated work timings to ensure work-life balance.
6. Dedicated co-working spaces for female lawyers with complete facilities for lawyers should be established to support their legal practice.
7. Effective mechanisms to report harassment and a safe working environment should be developed.
8. There should be more gender-sensitivity trainings for male colleagues, especially those in positions of power, influence and authority. Teachers must also be trained so they could recognize any latent biases to avoid discouraging their female students from legal practice.

9. Wider considerations for eligibility of candidates based on qualities such as competence, integrity and reputation should be included. There should be reduced focus and stress on technical qualifications such as number of reported judgments etc that may hinder advancement of otherwise deserving candidates for want of technicalities.
10. More accessible information on the processes and procedures should be made easily available. Wider outreach and capacity building programs especially in areas where there is less representation of women such as in the prosecution service or in specific male dominated fields like criminal law, should be provided. Data and information portals should be established for providing reliable, accessible, timely, information and awareness as well as support to navigate and excel in the legal profession, especially in leadership or representative roles.
11. Legal and constitutional amendments required for affirmative actions for inclusion of women should be made at earliest. There should be paradigm shift from a nominations-based process to an applications-based process for promoting fair representation in the judicial appointments process with an underlying lens of diversity and inclusion.
12. There should be quotas for female judicial officers and court staff as well to increase their representation in administrative channels in the judicial sector. It is believed that this could help improve the overall court environment and make it more accessible for women to interact and deal with female staff in courts.
13. Process of obtaining licenses and interviews for being admitted for legal practice in superior courts should be streamlined further and clear timelines should be developed so that unnecessary delays as a result of discretion and ad hocism in the process can be avoided.
14. Firms should ensure that gender balanced teams are set up in every case the firm/lawyer gets so that women have a fair and equal chance to grow and have the necessary exposure of handling and dealing with clients, court staff and arguing before the courts.
15. There should be systemic reforms in the composition of leading bodies such as JCP and bar councils to ensure fair representation through affirmative actions.
16. There should be an express commitment to diversity and inclusion by all institutional stakeholders, particularly those created under the Constitution of Pakistan 1973 to comply with Article 25 and 34 of the Constitution.

B. Policy Recommendations

i. Diversity and Inclusion as an Overriding Objective

There must be a paradigm shift and across the board commitment to diversity and inclusion as the underlying objectives among all stakeholders, relevant institutions and figures of authority in the justice sector. All reforms, processes, developments should then be made from the lens of diversity and inclusion.

State and Legislature

i. Public-Private Partnership for Reforms with a Gender, Diversity and Inclusion Lens

In line with Pakistan's international commitments and obligations, the State must work with key stakeholders and implement legislative and regulatory reforms to ensure objectivity, merit and transparency in the appointment, selection and election procedures within the justice sector with a gender, inclusion and diversity lens. While devising any reforms in judicial appointments process, the underlying objective should be transparency, diversity and inclusion as opposed to gatekeeping and control of arbitrary powers.

ii. Separation of Regulatory and Representative Role of Bar Councils

The structure of bar councils should be reformed itself to ensure that regulatory and representative roles are separated and to ensure that it is reformed with a gender and inclusion lens. Based on the recent reforms in the United Kingdom, an independent and autonomous body should be established to regulate the legal profession, such as the Solicitors Regulatory Authority in the UK.

iii. Gender Balanced Composition of Concerned Bodies

Legislative and Constitutional reform to ensure gender balanced composition of leading institutions in justice sector responsible for recruitment and appointments in the justice sector such as the JCP, Interview Committees etc. Reforms must reflect the need and means for women to be present in policy-making positions within the bar councils to provide adequate input on various policies and rules that are likely to adversely affect women, such as transfer policies in the subordinate courts.

iv. Affirmative Action for Fair Representation

The legislature must introduce mandatory requirements to ensure representation and inclusion of women in all spheres of the justice sector. Indirect election process based on Single Non-Transferrable Vote (SNTV) of Provincial Bar Council members for election of Pakistan Bar Council members should be reformed. It must be ensured that there is representation of women in apex body representative of lawyers.

v. Effective Strategies to Counter Violence

Amend Legal Practitioners and Bar Councils Act and Rules and take other appropriate measures to address unsafe workplaces, harassment and increasing violence in courts and by lawyers. Reform the current complaints procedure against advocate so that the same is handled and addressed by an independent body.

vi. *Enabling Infrastructure*

The state must ensure that an enabling infrastructure including access for persons with different abilities, separate and well-equipped washroom facilities as well as day-care centres and other infrastructural development investment is budgeted and implemented in all sectors for accessing justice.

Judiciary

i. *Judicial Diversity Committee for Greater Outreach for Inclusion, Training and Information*

A Judicial Diversity Committee should be set up along the lines of judicial diversity committee in the UK to work towards enhancing the pool of eligible candidates for prospective judicial vacancies, to conduct outreach efforts and share and gather relevant information and data.

ii. *Courtroom Environment*

Judges should enforce stricter code of conduct to ensure a gender sensitized environment and decorum in their courts that promotes a safe working environment and space for women and other marginalized groups.

iii. *Increasing Female Court Staff*

More female staff should be hired for admin and staff positions in the courts.

Bar Councils

- i. Bar councils and judicial academies must make targeted gender-sensitization trainings a mandatory requirement for those entering the legal profession.
- ii. Bar councils must mandate affirmative action to ensure fair representation of women in bar associations and councils.
- iii. Comply with Protection from Harassment of Women at Workplace Act as amended.
- iv. Create awareness among young lawyers in general and female lawyers in particular for candidacy requirements to stand in bar elections.
- v. Actively include female panelists in all debates and efforts of the bar for any collective decision making, reforms or other developments.
- vi. Create safe and enabling environment for women to vote in bar election. Ensure separate entry and exit to enable safe access.
- vii. Introduce online voting/e-voting system for greater access, inclusion and more effective management of bar elections.
- viii. Provide safe transport for female candidates for inter-city travel related to election and/or campaign.

Law Firms and Chambers

- i. Clear entry and progression targets and standards should be provided.

- ii. An equal opportunity statement should be publicly declared on websites and for any vacancies that may arise.
- iii. Liaison with law schools to partake in graduate placement programmes.
- iv. The allotment of chambers by District Bar Associations must be inclusive of women and the allotments should have specific quota for women.

Civil Society

- i. Civil society organization must continue to raise awareness and engage with the political leadership to urge the political will for reform for gender parity in the workplace and specifically the justice sector.
- ii. Conduct a mapping exercise to explore the extent of applicability and compliance of pro women laws in justice sector.
- iii. The legal profession should work with women's rights organization to execute trainings and provide the necessary toolkits for women to excel in the legal profession, such as the 'Future judges' programme in Jordan.
- iv. Women rights organizations and Bar councils should work together to hold detailed discussions and round-table conferences to identify emerging issues and formulate solutions through guidelines and toolkits for women in the legal profession (for example the UK Law Society's Women in Leadership in Law initiative and their comprehensive Law report 'Influencing for Impact: The Need for Gender Equality in the Legal Profession'.
- v. Lastly, women's rights organizations much work with regional partners to identify common issues that present as hurdles to women in the justice sector and the strategies to address them.

Law Schools

- i. Develop linkages with legal industry and connect students, especially female students with any opportunities to gain on-field experience to learn practical skills such as for instance via legal clinics, clerkships and other such programmes
- ii. Invest in training of faculty and admin to be gender sensitized and to train the trainers, so they are able to render appropriate advice without any latent bias, prejudice or preconceived notions about a student's gender
- iii. Conduct more trainings and workshops for students in campus and on site, especially about sectors that lack fair representation along with information to enable them to explore opportunities in them
- iv. Maintain gender segregated data of students and alumni to track progress and inform any policy based on such data so that any gaps or sectors in which there is low representation, or which remain untapped can be addressed
- v. Provide relevant, accurate and accessible information about the legal profession and the recruitments and appointments process in the various sectors of justice

- vi. Prepare pool of candidates, especially female students, to be ready to tap into future opportunities in those sectors by investing in their skill development

Female Lawyers

- i. Reclaim your space in the profession.
- ii. Be Part of a collective support network.
- iii. Participate in opportunities for learning, growth and development.
- iv. Ensure participation in meetings/conferences associated with legal profession and its reforms.
- v. Demand safe, inclusive and enabling workplaces, policies and procedures.
- vi. Extend support to other female colleagues through mentor-mentee programmes.
- vii. Make informed decisions and acquire information that can enable you to take effective decisions regarding your career.
- viii. Reach out to available support networks and/or colleagues.

Female Law Students

- i. Take Initiative.
- ii. Participate in opportunities for learning, growth and development.
- iii. Make informed decisions and acquire information that can enable you to take effective decisions regarding your education and career.
- iv. Reach out to available support networks and/or teachers, mentors and fellows.
- v. Focus on developing your inter-personnel skills.

Legal Community and Male Colleagues

- i. Be an ally.
- ii. Support inclusive policies and processes.
- iii. Support safe workplaces and practices.

Annexures

Table 1 - Legislative and Constitutional Gaps

Existing Process
<p>A. Judiciary</p> <p><i>i. Subordinate</i></p> <ul style="list-style-type: none">❖ Competitive Exam❖ Confirmation❖ Promotion❖ Seniority-Cum-Merit❖ Quota for Minorities & Differently Abled <p><i>ii. Higher</i></p> <ul style="list-style-type: none">❖ CJ moves Nomination❖ JCP Votes❖ PC Approves❖ President Appoints❖ Oath of Office <p>B. Bar Councils</p> <p><i>i. Provincial Bar Council</i></p> <ul style="list-style-type: none">❖ Meet qualifications for candidacy under Section 5A of Legal Practitioners and Bar Councils Act 1973❖ Proposal/Nomination by duly qualified voter of a duly qualified candidate❖ Inspection and Scrutiny followed by Acceptance or Rejection of the Proposal/Nomination❖ Election by Secret Ballot <p><i>ii. Pakistan Bar Council</i></p> <ul style="list-style-type: none">❖ Meet qualifications for candidacy under Section 11A of Legal Practitioners and Bar Councils Act 1973❖ Proposal/Nomination by duly qualified voter of a duly qualified candidate❖ Inspection and Scrutiny followed by Acceptance or Rejection of the Proposal/Nomination❖ Electoral Roll comprising of winning candidates from Provincial Bar Councils❖ Election by Secret Ballot. <p>C. Prosecution Service</p> <p><i>i. Prosecutors</i></p> <ul style="list-style-type: none">❖ Competitive Exam by PPSC❖ Interview by PPSC and Prosecutor General❖ Reserved seats/Quota for minorities and differently abled

ii. Prosecutor General

- ❖ Appointed under S6 of the Punjab Criminal Prosecution Service Act of 2006.
- ❖ Qualifications for appointment contained in S7 of the 2006 Act.

D. Law Firms and Chambers

i. Law Firms

- ❖ Each firm has its own recruitment and progression policy and process.
- ❖ These may be written, oral or unspoken.
- ❖ Recruitments can be need-based or in line with annual recruitment cycle of a given firm.
- ❖ Progression will be performance based or business value added based.

ii. Chambers

- ❖ Subject to availability, Chambers are allotted by District Bar Associations in accordance with their internal policies.
- ❖ District Bar Association has discretion over the decision of allotment.

Gaps

Judiciary

i. Subordinate

- ❖ No separate quota or reserved seats for women.
- ❖ Seniority is a factor in 60% of recruitments of Additional District and Sessions Judge and for promotion for District and Sessions Judge.

ii. Higher

- ❖ Arbitrary and lack of transparency in nominations.
- ❖ No representation of women ensured in composition of JCP.
- ❖ No affirmative action/reserved seats for women in higher judiciary.
- ❖ No Accountability.

Bar Councils

- ❖ Regulatory Capture – voter plays a central role in candidacy for Bar Elections.
- ❖ No separation between regulatory and representative roles of Bar Councils.
- ❖ No gender-neutral language in Sections 5A or 11A.
- ❖ No affirmative actions, quota or reserved seats for women.

C. Prosecution Service

i. Prosecutors

- ❖ Discretion of PPSC and Prosecutor General at interview stage.
- ❖ No statement on equal opportunity or express encouragement for female candidates to apply in job advertisements.

ii. Prosecutor General

- ❖ Political Appointment.
- ❖ Discretion of Provincial Government to appoint whoever meets the qualifications under S7 of the 2006 Act.
- ❖ Not based on any competitive exam.
- ❖ No stated commitment to diversity and inclusion.

D. Law Firms and Chambers

i. Law Firms

- ❖ Law firms are private entities and are not regulated by any professional body of lawyers.
- ❖ No standardized HR policies, recruitment or progression tracks.
- ❖ Usually no commitment to diversity and inclusion.
- ❖ No accountability for lack of diversity and inclusion.
- ❖ Absolute discretion of the partners as regards recruitment and progression policies.
- ❖ Usually, no transparency or publicly declared process for recruitment and progression.

ii. Chambers

- ❖ No affirmative action, reserved quotas for allotting chambers to female lawyers.
- ❖ Absolute discretion of the District Bar Association to allot chambers.
- ❖ Lack of transparency and accountability.

Table 2 – Structural and Invisible Barriers

Standards that Respondents Expect
<ol style="list-style-type: none"> 1. Equal Opportunity and Treatment 2. Equal Pay 3. Basic Pay and Stipend Regulated – Bar Councils to set up Fund to Support Young Lawyers 4. Safe Working Environment and Space 5. Effective Strategies to Counter Workplace Harassment, Bullying and Gender Stereotyping in Law 6. No Discrimination – No Nepotism in Recruitment, Appointments and Advancement 7. Work-Life Balance – Flexible Work Opportunities/Regulated Working Hours 8. Greater Transparency in Hiring, Appointments, Progression and Termination Processes 9. Reform of Bar Elections Process to make it more Fair, Accessible and Inclusive 10. Separation of Regulatory and Representative Role of Bar Councils 11. Regulation of Law Firms so they have HR policies that Comply with Basic Standards of Non-Discrimination and other Fundamental Principles 12. Regulation of Chamber Allotments on a Fair Representation, Non-Discrimination and Equal Opportunity Basis 13. Fair Representation in Higher Roles and Positions 14. Gender Sensitization to address Patriarchal and Discriminatory Mindsets 15. Inclusion of Women’s Effective Voices in Official Events by Bars related to Lawyers and Legal Profession 16. Early Discouragement in Law Schools from Active Legal Practice to be replaced by more Information and Awareness Drives as well as Capacity Building and Training Opportunities 17. Compliance with Code of Conducts and other Laws Protecting Persons at Workplace 18. All employees should be treated as ‘professionals’ as opposed to being ascribed to their gender
Existing Practice
<ol style="list-style-type: none"> 1. No Compliance with Protection of Women from Harassment at Workplace Act 2010 (as amended in 2022) 2. Arbitrary hiring, appointments and progression processes in judiciary, prosecution service as well as in law firms 3. Lack of commitment to diversity, inclusion and equality of opportunity 4. Long and unregulated working hours at times even on weekends 5. Stressful profession 6. No enabling, child friendly or gender sensitive infrastructure and facilities such as washrooms, day-care etc. 7. Regulatory capture of Bar Councils 8. Unsafe working environment 9. Unequal and arbitrary pay 10. Discriminatory and sexist interview questions during recruitments and appointments processes 11. Lack of accountability of bad behavior 12. Lack of maternity/parental leave and benefits 13. Male dominance in senior and representative roles and positions 14. Statutory rules and provisions that inherently favor/benefit men 15. Lack of affirmative actions for fair representation in justice sector 16. Procedural delays in obtaining licenses. 17. Nepotism and Class Bias 18. Gatekeeping

Barriers that Hinder Access

1. Discouragement from active legal practice especially in areas considered harder for women such as criminal law.
2. Lack of guidance and accessible information on recruitment and appointments process and requirements.
3. Lack of networking opportunities for women.
4. Inequality in resources for contesting Bar elections on equal footing.
5. Gender stereotyping and gender bias resulting in lack of equal opportunities for women to excel.
6. Male entitlement to access courts as public spaces – women seen to be invading or encroaching that space as opposed to being viewed as professionals of equal rights and standing.
7. Self-sabotaging behavior and imposter syndrome.
8. Professional tribalism and brotherhood.
9. Patriarchal mindset.
10. Legal education that does not prepare for legal practice.
11. Difficulty to gain trust of clients because of gender bias and perception of legal profession as being suited to men.
12. Poor reputation of legal profession causing families to discourage women from pursuing law.
13. Lack of agency of women over their professional and career choices and other aspects of their life.
14. Lack of structures within the justice sector that can accommodate and facilitate working women/mothers.
15. Lack of visibility and recognition due to unequal opportunities to litigate.
16. Conveyance, travel and parking challenges to and from courts.
17. Challenges for women to travel outside city for work/cases.
18. Perceived baggage of hiring women (maternity leave, turnover after marriage/child(ren), harassment and safety concerns etc.)
19. Lack of understanding among employers regarding constraints on women of not being able to work late hours from office.
20. No official graduate placement programme by Bar counsels.
21. Disrespectful/Dismissive attitude of some clients, judges, colleagues, staff and others towards women.
22. Violence against Women including against female lawyers in courts.
23. Character assassination of female lawyers by colleagues.
24. Financial barriers and monetary/funding constraints (to set up own law firms or effectively compete in Bar elections, for instance).
25. Perception of justice sector in masculine terms.
26. Personal constraints imposed by gender roles prevalent in the society.
27. Usually, no shared responsibilities at home so women have to take care of both domestic and professional responsibilities.
28. Culture of taboo around women going to courts/kacheri that adds to the culture of discouraging women from pursuing litigation.
29. Discrimination based on degree classification (local and foreign) and on basis of class.
30. Competition bias – women entering active legal practice perceived as an ‘unnecessary’ threat/competition for male counterparts.
31. Sexist culture that strengthens status quo of male dominance and perpetuates gender inequalities in justice sector.



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