

Patriarchy, Power & Gender Politics

Examining Diversity & Inclusion in the Justice Sector: A Case of Pakistan

Nida Usman Chaudhary

Diversity & Inclusion Advocate

Founder – Women in Law Initiative Pakistan & Lahore Education & Research Network

Adjunct Faculty Member for LL.M - University of London Programme at

Pakistan College of Law, Lahore, Pakistan

LL.B (Hons), LL.M (Law and Development) London

Abstract

Women’s equal participation, access, and advancement in labour force, and more importantly, in key decisions making roles, remains an open challenge that has only exacerbated as a result of the Covid19 pandemic. In this regard, the disparity prevalent in the justice sector is amongst the most critical sectors not just because of the under-representation of female practitioners in leadership roles for their sake but also because of the nexus of representation and inclusion with access to justice for citizens in general that look to this sector for justice in event of a dispute and infringement of rights. Due to lack of fair representation, the system fails to benefit from an enriched jurisprudence as it lacks diversity of perspectives and fails to benefit from lived experiences of nearly half of the population and of diverse communities contributing towards an increased disconnect and loss of confidence of public in the justice sector. This paper is based on the primary research I conducted in Pakistan in 2021-22. It examines the recruitments and the appointments process in the justice sector with a gender and inclusion lens and highlights the legal and constitutional as well as the structural and invisible barriers that hold women back. In doing so, it also highlights the role patriarchy plays in maintaining and sustaining the power dynamics of the dominant class and gender in justice sector and how technicalities are often employed as a tool for gatekeeping access and advancement in the justice sector to perpetuate the existing inequalities. It is in this socio-political and cultural context that I will examine diversity and inclusion in legal sector of Pakistan.

Keywords: Patriarchy, Fair Representation, Justice Sector, Diversity & Inclusion, Employment Sector

1. Introduction

The justice sector in Pakistan primarily consists of judiciary, prosecution service, Attorney General Office, Office of Advocate General, bar councils, bar associations, courts, law enforcement agencies and the law firms. These institutions, entities and organizations are not just vehicles of serving justice, upholding rule of law or providing access to rights and remedies to organizations, victims and survivors, but are also formal employment avenues for their staff, associates and employees that work for them. The justice sector however, is not generally looked upon as a ‘formal employment/business sector’ and hence the regulations and standards related to inclusive workplaces, rights of employees, business and human rights, due diligence, humane working conditions, transparency, regulated timings, policies to address harassment at workplace, day care, parental leaves and zero tolerance towards sexism and misogyny during hiring and promotions, as envisaged in the business and human rights paradigm, do not generally feature in the debates around justice sector reforms.

This shows that the discourse from a human resource and employment/workplace context is largely missing locally as well as globally as far as justice sector is concerned. Labour laws also do not cover all aspects of professional or official opportunities especially for professional or ‘white collar’ employees as they are largely governed by notions of freedom of contract or terms of reference as determined for legal/constitutional positions by the government in line with its policies, rules and regulations.

The global business and human rights discourse has largely focused on impact on human rights of ‘commercial’ business activities. It prioritises due diligence for human rights abuses in supply chains in production of goods or providing access to remedies for victims and survivors of exploitation or externalities resulting from business and/or commercial activities.

The evolving notions around ‘corporate’ responsibility to respect human rights do not neatly cater to the establishments within the justice sector. In that, a court is not a commercial entity, a bar council or association is also not a commercial entity, the same is true for prosecution service, law enforcement agencies and other offices set up under law or constitution. The law firms are also largely sole proprietorships or partnerships that fall outside the scope of what it means to be a ‘corporation.’ The ‘protect, respect and remedy’ framework is therefore, not equipped to cater to the human resource challenges that may be faced by staff and employees in the justice sector.

The justice sector, however, does recruit and appoint staff and associates and other office bearers. In doing so it creates employment, labour or contractual relationships with their workers, recruits and/or appointees. Very few of these positions are likely to be covered by labour laws. Most of them are considered professional positions to be negotiated by professional themselves in line with freedom of contract without regard of the unequal bargaining positions such as in case of law firm associates, or they are governmental/statutory or official positions advertised in line with existing state policies, laws or rules, which may themselves need to be revisited from a diversity and inclusion lens.

The law firms are largely unregulated from perspective of the terms which they offer their associates and staff. Courts, bar councils, bar associations and other forums also have a lot of freedom to recruit and appoint without much accountability under a diversity and inclusion lens.

There are little or no comprehensive laws and policies that can regulate the justice sector from a diversity and inclusion perspective and uphold rights of workers, employees, associates and staff in the justice sector in line with best human resource practices. Few laws that do exist, such as anti-harassment laws, suffer from the oft seen challenge of lack of implementation or other technicalities that may lead to their non-application in context of professionals.¹

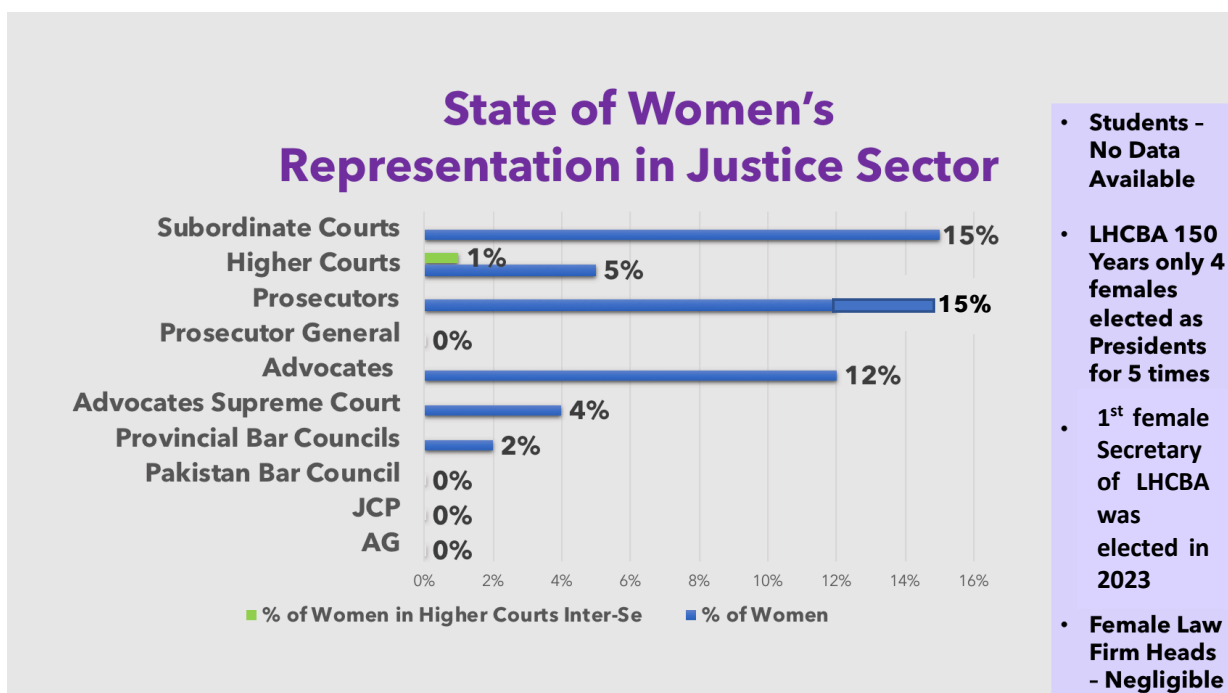
This paper argues that justice sector is a formal employment sector which suffers from lack of diversity and inclusion due to legal, constitutional, structural, systemic, cultural and invisible barriers rooted in patriarchy, gender roles and stereotypes. It also suffers from lack of regulation and lack of adherence to global best practices in labour and employment sectors as a result of which there are little or no HR policies, benefits, transparency, or other enabling policies for those who work in legal sector.

In doing so it also highlights that fair representation in justice sector is not just a gender struggle but also a struggle for decent work and basic rights and argues that it is crucially important to take into consideration structural and invisible barriers for reform. It notes that legislative and constitutional reforms are not in and of themselves sufficient and a more holistic socio-economic perspective will have to be adopted for effective reforms to ensure gender diversity and inclusion in the justice sector.

¹ Protection of Women Against Harassment at Workplace Act 2010. This law applies to situations which fit neatly within an employer-employee context. Even though in 2022, this law was amended to the extent of the federal territory and was not applicable to the provinces that post 18th amendment of the Constitution of Pakistan 1973, will have to pass their own amendment to bring the law in line with the developments, the question of whether it would still cover all the actors in the justice sector who work in courts, at bar councils, in police stations or prosecution service remains a moot point.

This paper will also be a means to share the findings of our study on recruitment and appointments process in justice sector with a gender/inclusion lens. It will highlight legal and constitutional, as well as structural and invisible barriers that hold women back. It will also highlight the role patriarchy plays in maintaining and sustaining power dynamics of dominant class and gender and establish how technicalities like ‘seniority’ are often employed as gatekeeping tactics in justice sector to perpetuate inequalities. It is within this socio, political and cultural context that we will examine state of diversity and inclusion in the justice sector in Pakistan.

2. State of Gender Diversity and Inclusion in the Justice Sector in Pakistan



The graph above shows the state of representation of women in justice sector in Pakistan as of 2020-21.²

The justice sector in Pakistan is a sector which fares poorly when it comes to gender representation and inclusion. The following data is from the baseline report, ‘State of Women’s Representation in Law’ 2020-21.³ It shows that women make up 15% of the subordinate judiciary (this is also the percentage of women judges overall cumulatively in Pakistan as well) while only about 5% women make up members of the judiciary in the higher courts. As between women judges altogether, only 1% of the total 15% are represented in higher courts as judges.

Only 15% women make up prosecutors in Pakistan whereas no woman has been a Prosecutor General yet, which is the senior most post in this sector.⁴

In Pakistan, there is a tier based and progressive system through which advocates get rights of audience before different level of courts. Upon initial enrolment, an advocate is entitled to practice and appear before subordinate courts (i.e. all courts and tribunals under the provincial high courts). Upon two years of practice and requisite number of technical requirements such as appearing as counsel or associates in given number of cases and clearing the interview, the

² Nida Usman Chaudhary, ‘State of Women’s Representation in Law 2020-21, Baseline Report’, Women in Law Initiative Pakistan in collaboration with Federal Ministry of Law and Justice, Group Development Pakistan, Australian High Commission and British High Commission. Available at <https://www.lawyher.pk/resources/Reports>.

³ Ibid.

⁴ Ibid.

advocate is able to appear before the provincial high courts only but not in the Supreme Court, save in exceptional circumstances. It is only after a period of seven years and additional technical requirements do advocates get enrolled and access to appear before the apex court in the country.⁵ As a result, female advocates in Pakistan account for only 12% of advocates, but only 4% of Advocates Supreme Court are women.⁶ This is significant because Advocates Supreme Court are considered senior most advocates in the country and they alone have the eligibility to become members of the Pakistan Bar Council (apex regulatory body of lawyers in the country).⁷ In this way, representation in justice sector is tied to advancement in the profession as a whole but the gatekeeping and technical barriers hold women back.

There are four main provincial bar councils in Pakistan in addition to the Azad Jammu and Kashmir and Gilgit-Baltistan bar councils.⁸ The state of representation of women in provincial bar councils is not very encouraging either. Although, bar members come into office by way of elections and not appointments, yet only 2% women make up members of the provincial bar councils altogether in Pakistan.⁹ Unlike the national assembly, no seats for women, religiously diverse communities, differently abled or other persons have been reserved to ensure representation.

The Pakistan Bar Council, The Judicial Commission of Pakistan (JCP - main constitutional body responsible for judicial appointments in High Court and Supreme Court) and the Office of the Attorney General for Pakistan (AG) also has 0% representation of women.

When viewed from the perspective of formal employment sector and human resource management lens that aims to make workplaces more inclusive, diverse and conducive, these numbers project a very discouraging and unsatisfactory situation.

It must, therefore, be assessed,

- i. why such a disparity exists,
- ii. whether any institutional and/or administrative steps have been taken for a conducive working environment and to correct the gender imbalance, and if not, then
- iii. why the institutions in the justice sector that formally hire, appoint, elect or recruit personnel have failed to introduce policies and measures that can address the gender inequality that currently persists in these sectors.

In doing so, we must examine the recruitments and the appointments process in the justice sector in Pakistan with a gender and inclusion lens and highlight the legal and constitutional as well as the structural and invisible barriers that hold women back. We must also highlight the role patriarchy plays in maintaining and sustaining the power dynamics of the dominant class and gender in justice sector and how technicalities are often employed as a tool for gatekeeping access

⁵ Women in Law Initiative Pakistan, 'Obstacles in Obtaining Licenses to Practice as Advocates and its Implications', Lawyher.pk 22 October 2022. Available at: https://www.lawyher.pk/Uploads/Women%20in%20Law%20-%20Obstacles%20in%20Obtaining%20Licenses%20to%20Practice%20as%20Advocates%20and%20its%20Implications_31bc.pdf

⁶ See Supra Note 2.

⁷ Nida Usman Chaudhary and Anoshay Fazal, 'Fair Representation in Justice Sector: An Interdisciplinary Gap Analysis Study of the Recruitments and Appointments Process in the Justice Sector with a Gender Lens', Women in Law Initiative Pakistan, 4 June 2022. Pg 40. Available at: https://www.lawyher.pk/Uploads/Fair%20Representation%20in%20Justice%20Sector%20-%20A%20Study%20by%20Nida%20Usman%20Ch%20and%20Anoshay%20Fazal_compressed_db1f.pdf

⁸ These include, a. Punjab Bar Council, b. Sindh Bar Council, c. Khyber Pakhtunkhwa Bar Council and Balochistan Bar Council.

⁹ See Supra Note 2.

and advancement in the justice sector to perpetuate the existing inequalities. It is towards these that we now turn.

3. Recruitment, Elections and Appointments Processes in Pakistan's Justice Sector

Since, this paper is based on the primary research conducted in Pakistan in 2021-22¹⁰ on four select sectors, namely, i. judiciary, ii. bar councils, iii. prosecution service and iv. law firms, I will limit my analysis and description of recruitment, elections and appointments process in Pakistan to these four sectors only, for the purposes of this paper.

A. Judiciary

The judiciary in Pakistan can broadly be classified as 'subordinate' and 'higher' judiciary. In that, subordinate judiciary comprises of courts that work under the provincial high courts. These include mainly civil courts/magistrates and sessions courts but also other administrative courts or tribunals. For the purposes of this paper, we will limit the analysis to civil courts and sessions courts.

The recruitment of judges in the subordinate tiers is based on a competitive examination, viva voce, medical examination and interview. The eligibility to sit for the exams for the initial recruitment pool comes after two years of 'active legal practice' experience. Once the exams and interview are cleared, the successful candidates undergo requisite training in the provincial judicial academy, during which they may also be required to shadow a senior judge in court for real time experience of conducting proceedings in the court and maintaining its decorum. The judges get paid a salary determined by the government that retains power over their transfer and postings. In this way, judges in subordinate judiciary are in service of the government. Positions in subordinate judiciary are, therefore, positions for a career in judiciary akin to that of civil servants.¹¹

The higher judiciary on the other hand comprises the provincial high courts, the Federal Shariat Court and the Supreme Court of Pakistan along with their appellate forums. These are creatures of the constitution and do not operate under the government of the day. Rather they are independent constitutional bodies and their members are recruited in accordance with procedures laid down in the constitution and/or relevant rules. Their appointment, transfer and postings are not under the government. In that sense, judges in higher courts are not in service to the government and so cannot be said to be akin to civil servants. They are not pursuing a 'career in judiciary' rather, they are serving the constitution and occupying a constitutional position and role. Their appointment process is, therefore, fundamentally different from the way subordinate judiciary is recruited.¹²

Judges in the higher courts are appointed in accordance with Article 175-A of the Constitution of Pakistan read together with the Judicial Commission of Pakistan (JCP) Rules, 2010. Article 175-A sets up the Judicial Commission of Pakistan for the appointment (JCP) of judges in the superior courts. It creates a two-tier process for appointment of judges in higher courts by:

- a. setting up a nine-member judicial commission comprising senior judges, former judge, ex officio members such as the law minister and Attorney General for Pakistan and a representative from the Pakistan Bar Council, and

¹⁰ See Supra Note 7.

¹¹ Ibid Pg. 25-26.

¹² Ibid Pg. 26.

- b. a parliamentary committee comprising members from the treasury and opposition benches to confirm the nominees proposed by the members of the judicial commission for appointment as judges in the higher courts.

It is interesting to observe that there is 0% representation of women in the nine-member JCP despite the provision of Article 25 and 34 in the Constitution of Pakistan, 1973 that call for affirmative action for full participation of women in national life, even though, there is margin to include women as members of the judicial commission of Pakistan in shape of former chief justice¹³ or for the slot that is to be occupied by a nominee of the Pakistan bar council,¹⁴ who must be a 'senior' advocate of the supreme court; currently, no woman is a member of the judicial commission of Pakistan. The specific language used in the Article itself appears to exclude women. This is because the first female Chief Justice of a high court in Pakistan was appointed only in the year 2018¹⁵ while the first judge of a Supreme Court who is a female was appointed in 2022 and will be in office till 2031.

Moreover, prior to the 19th amendment of Constitution of Pakistan, 1973, the role of Parliamentary Committee for judicial appointments was stronger as they could raise concerns or even reject, with reasons, the names of nominees proposed for judicial appointments by the JCP. This was viewed as an attempt to hinder 'independence' of judiciary and hence, through successive judgements¹⁶ and eventually the 19th amendment of the Constitution, the role of Parliamentary Committee was reduced to that of rubber stamping. Any reservations they now have are justiciable in court with the final word on them being of the Chief Justice of Pakistan.

Presently, Rule 3 of the JCP Rules 2010, mandates that the list of names against a vacancy in higher courts, to be considered by the other eight members of the JCP are to be moved by the Chief Justice of the respective high court or by the Chief Justice of Pakistan in case of vacancy in the Supreme Court.¹⁷ This places arbitrary and unstructured power in the hands of one office/individual i.e. the Chief Justice to initiate/propose the names for appointment which makes the process non-transparent and subject to criticism for being arbitrary, biased and selective. The ability to pick and choose the nominees has met with fierce backlash from the legal community, particularly the bar councils and bar associations with accusations ranging from packing the courts with 'likeminded' judges for political outcomes to favouring their kith and kin on the bench to maintain and sustain a hegemony of class and gender in upper echelons of judiciary.¹⁸

¹³ Article 175-A (iii) a former Chief Justice or a former Judge of the Supreme Court of Pakistan to be nominated by the Chief Justice of Pakistan, in consultation with the [four] member Judges, for a term of two years;

¹⁴ Article 175-A (vi) a Senior Advocate of the Supreme Court of Pakistan nominated by the Pakistan Bar Council for a term of two years.

¹⁵ Justice (r) Tahira Safdar was appointed as Pakistan's first female chief justice of the Balochistan High Court in the year 2018.

¹⁶ See for instance, Nadeem Ahmad Advocate v. Federation of Pakistan (PLD 1165 SC 2010), Munir Hussain Bhatti v Federation of Pakistan (PLD 2011 SC 407) and Presidential Reference No. 01 of 2012 (PLD 2013 SC 279).

¹⁷ Rule 3, Judicial Commission of Pakistan Rules, 2010. Available at: <https://www.supremecourt.gov.pk/download/rules-2010/>

¹⁸ Ahmad Saeed, 'Bars Demand Equal Representation in process of Judges Appointment', Voicepk.net. July 27, 2022. Available at: <https://voicepk.net/2022/07/bars-demand-equal-representation-in-process-of-judges-appointment/>. See also: Hasnaat Malik, 'PBC member wants nomination criteria to be disclosed', Express Tribune 8 April 2017. Available at: https://tribune.com.pk/story/1378224/superior-judiciary-must-disclose-nomination-criteria-appointment-high-court-judges-says-pbc-member/?fbclid=IwAR37RmS3_daPMJ7-7Dd-iMVG7NSCULHI-RLIj9KE9FQxgx44EAeQrAWKtk4 and Wajih Ahmad Sheikh, 'Bar for more transparency in filling LHC judges vacancies', Dawn, 25 March 2019. Available at: <https://www.dawn.com/news/1471677>

Unfortunately, little or no safeguards to ensure fair representation in higher judiciary have been made and calls for reform of the process have tended to focus on curbing the arbitrary powers of the Chief Justice by mechanising the process through ‘automatic elevations’ to the Supreme Court on basis of ‘seniority’ rather than on rooting it in principles of diversity, inclusion and fair representation to ensure a diverse and inclusive composition in the apex court. It seems that fair representation of gender and persons from diverse communities including diverse religious communities is not even a consideration, let alone a priority of the leading stakeholders in the bench and bar that are dominated by men.

Female lawyers on the other hand, have attempted to put forth the gender discourse and the gender perspective that has been missing from the debate around reform of judicial appointments for a very long time. Women in Law Initiative Pakistan, that is a leading collective working for equality of opportunity for female lawyers in Pakistan, in particular has issued several statements highlighting the implications on female lawyers of entrenching notions like ‘seniority’ and how such technicalities will hold them back from being fairly represented in leadership roles in justice sector.¹⁹

Whilst they recognise that current process of appointing judges in higher courts is arbitrary and needs reform, they stress that such should not be at expense of pushing women back on basis of technicalities like seniority that suit men, but rather that it should be made in accordance with the constitutional guarantees of fundamental rights given in Articles 25 and 34 of the Constitution of Pakistan that talk about full participation of women in national life and allow for the state to take affirmative action for operationalising gender equality. Women in Law Initiative Pakistan believes that being public/constitutional bodies, they are bound by need for safeguarding the constitutional guarantees and freedoms envisaged in the Constitution of Pakistan and that such bodies must first implement the guarantees in their own institutions to reform the processes and adopt requisite affirmative actions to make them more gender inclusive and to ensure full participation of women before they can be in a position to enforce and uphold the constitution in context of other parties.²⁰

As an alternative to entrenching ‘seniority’ and ‘mechanising’ the process to curb powers of the chief justice, Sara Raza and I had instead proposed amongst others that:

1. no single gender should comprise more than half of the composition of bodies responsible for appointing judges;
2. gender diversity be considered part of ‘merit’ and the one bringing diversity to the bench be preferred in event of a vacancy in the higher courts;
3. temporary quotas to ensure fair representation of women may be introduced;
4. minimum age of appointment for a judge of the high court be relaxed by five years for women to increase the pool of applicants of eligible women;
5. pool of applicants for appointment as judges in higher courts be widened to consider appointments from members of academia, in-house legal counsels etc;
6. a judicial diversity and outreach committee be set up as a standing committee with equal representation from provinces to ensure that a pool of diverse members eligible for judicial appointments is available when vacancies arise;
7. nominations process be changed altogether in favour of an applications-based model so that interested and eligible applicants can all equally apply and be considered for appointment

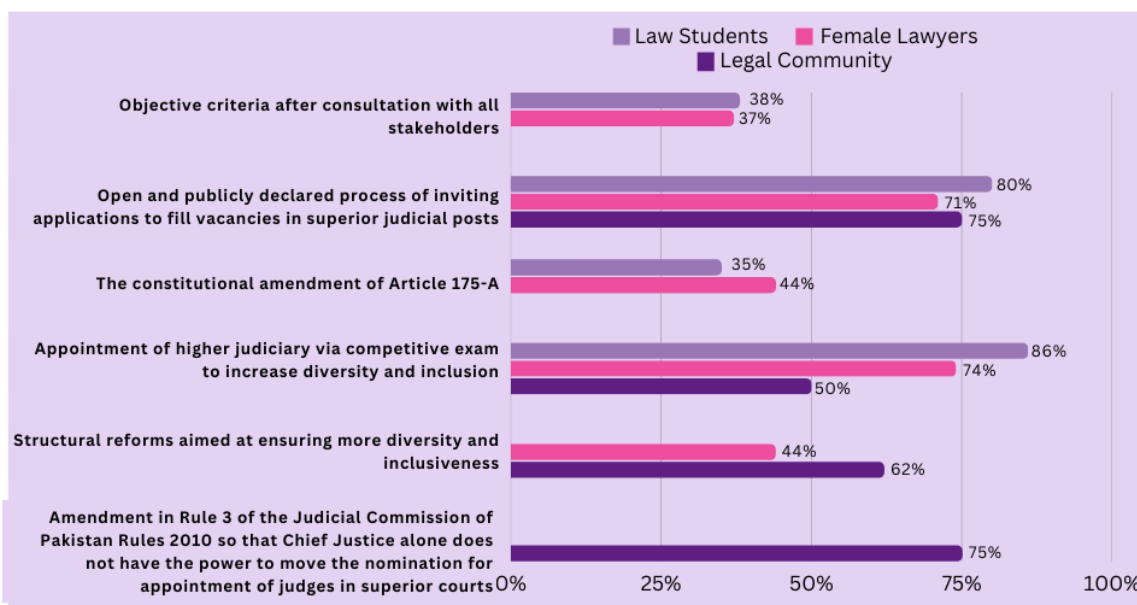
¹⁹ See, <https://twitter.com/WomenInLawPk/status/1431495389199405059?t=druggBR762BuiRJ04CEJWg&s=19>, <https://twitter.com/WomenInLawPk/status/1553048191288967169?t=NbCtmpJdeesuNCjtxfxFWA&s=19>, and <https://twitter.com/WomenInLawPk/status/1478666045485420546?t=ZxR1Oo5300Pxm0atMRHYxw&s=19>

²⁰ Ibid.

rather that the power to nominate lie with one person/office and them putting forth names of their own choosing out of their limited circle.²¹

As the baseline report highlights, there is a higher percentage of women in the subordinate judiciary (15%) as opposed to 5% in high courts and barely 2% in apex court.²² The participants of the research were asked whether they believed that this was due to difference in the way the recruitment and appointments process was structured for subordinate judiciary and the higher judiciary; an overwhelming majority of them said ‘yes’. 74% of the female lawyers out of 102 respondents believed that appointment in higher judiciary via competitive examination would increase diversity and inclusion in higher judiciary while 71% of them believed that there should be a publicly declared process of judicial appointments through applications. These proposals remain in the field but so far, no reforms with a view to increase diversity and inclusion in judiciary have ensued.

Prominent reforms proposed to address challenges associated with representation in higher judiciary



Thus, in Pakistan, there is an over-empowered Judicial Commission (power to make its own rules (Art 175-A (4) of Const.) whose Rule 3 (JCP Rules 2010) further concentrates power to initiate nominations for judicial appointments by Chief Justice while successive decisions of the Supreme Court on this point have reduced Parliamentary Committee’s role to mere rubber stamping. There is no compliance with Article 25 and 34 of the Constitution in relation to judicial appointments and neither is there any appetite, indication or intention among the stakeholders, particularly the members of the JCP to see this process of appointments from the purview of these fundamental rights. There is also the challenge of narrow pool of eligible candidates who can be considered to be appointed as judges because members from academia and other non-traditional careers in law are currently not eligible and there is excessive focus on active legal practice. As a result of these factors, fair representation in judiciary is a challenge.

²¹ Nida Usman Chaudhary and Sara Raza, ‘Judicial Nominations and Appointments in Pakistan Under a Gender Lens’, Pakistan Journal of Diversity and Inclusion, 2021 Pg. 7-37. Available at: https://www.lawyher.pk/Uploads/PJDI%202021_a849.pdf

²² See Supra Note 2.

B. 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 and operate in accordance with the Legal Practitioners and Bar Councils Rules 1976. Of the sectors that were researched; this was the only sector in which candidates become members of the council through the democratic process of elections as opposed to any process of arbitrary appointment by another institution/office/person or through competitive examination etc.

Where members come into offices by way of elections, it is the democracy and democratic ways ensuring who comes to power. It appears that such a process might be offering equal opportunities to all candidates regardless of their gender to compete at a level playing field, leaving their victory to the voters. In many ways, bar councils are like the national and provincial assemblies, but one major difference between bar councils and the parliament is that there are reserved seats in the parliament for women and religiously diverse communities to ensure their representation however, no comparable affirmative action exists in case of bar council elections. In some bar associations (which are representative bodies under the bar councils) a special seat for women is available but not all bar associations follow this. Bar associations are in any case not the main statutory regulatory bodies as a bar council is so for the purposes of this paper, I shall remain focused on the situation with respect to bar councils as opposed to bar associations.

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.

Although, Section 29 of 1973 Act, expressly acknowledges that no woman shall be disqualified for admission as an advocate for a reason only of her sex, 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, 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.

Bar councils have no safeguards to ensure and promote the representation of women in their composition and 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. 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. What places bar councils in a unique relationship with the advocates in general is that the bar and advocates enrolled with the bar cannot be said to be in an employer/employee relationship in traditional sense of the term. This lack of employer-employee relationship can potentially be argued as a

basis for not complying with pro women laws such as protection women from harassment at workplace law that requires that there be such a relationship for the law to be applicable.²³

Nevertheless, the courts and the bar are the ‘workplace’ for the advocates and it is argued by some of the female respondents that were interviewed for the fair representation study,²⁴ that being the regulator, there should be some responsibility on the bar to ensure that it adheres to certain standards for creating an inclusive, conducive and accessible workplace for advocates, especially for the female advocates.

Out of all the sectors, the representation of women in bar councils was the poorest as it stood at barely 2% cumulatively in Pakistan.²⁵ During the research behind the reasons for this dismal percentage, several factors and ground realities emerged that reflected how patriarchy operates to impact chances of women succeeding in such roles and in absence of affirmative actions and disparity in number of eligible male and female voters, what happens to their representation in regulatory bodies of the profession. Before discussing those however, it is also interesting to realise that the backlash or challenges for women in this sector are not only rooted in socio-cultural context but also in how technicalities, eligibility requirements, laws and rules have been weaponised to hold women and young lawyers back from claiming their space in these bodies.

Bar council elections are held every five years. The most recent election was held in the year 2020. Just two years before this election, i.e. in 2018 there was an amendment to the Legal Practitioners and Bar Council’s Act 1973 that increased the eligibility of candidates who could run for the bar elections by five years each, such that where, previously ten years of active legal experience would have suffice, now the person intending to run as a candidate would need to show fifteen years of experience and so on so forth.²⁶ This amendment does not seem to have been the result of consultation with all stakeholders. In particular, the impact of this on women and young lawyers, that have limited or no representation in these forums, does not seem to have been taken into consideration.

Many female lawyers who would have qualified in the year 2020 to run as candidates for members of provincial bar council, had to sit out as a result of this amendment and that is how some of them were technically barred from participating in the bar elections. Although, women were not the only ones impacted from this amendment but given that women joined the profession much later than men and many even today start their ‘active legal practice’ much later than men, women therefore appear to be disproportionately impacted by this amendment. Their concerns, however, do not seem to have been taken up before the passing of these amendments. In fact, some women I interviewed expressed the concern that they are probably not even viewed as ‘stakeholders’ by bar or by parliamentarians for them to have the thought and sense to take them into consideration at all. The others I interviewed felt that this may have been a deliberate attempt to gatekeep these forums among the old guards.²⁷

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. This means that the legal community does not vote for the members of the Pakistan Bar Council directly. They are

²³ See Sections 2 (a) (f) (g) and (n) of Protection against Harassment of women at the Workplace Act, 2010 Available at: <https://qau.edu.pk/pdfs/ha.pdf>

²⁴ See supra note 7.

²⁵ See supra note 2.

²⁶ Section 4 and 6, Legal Practitioners and Bar Councils (amendment) Act 2018.

²⁷ See supra note 7, Pg. 39 and 42.

rather elected via the votes of the electoral college composed of the members of all Provincial Bar Councils and Islamabad Bar Council.

Like Section 5A, the eligibility for Pakistan Bar Council elections was also raised by five years via the amendment in 2018,²⁸ 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. However, unfortunately, the impact on fair representation is even worse in case of Pakistan Bar Council. This is because, 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.²⁹

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 Advocates of the Supreme Court there is a strong need to affirmatively address this gap and ensure advancement of women in the profession for fair representation in such roles. 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.

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.

In Pakistan, the bar councils appear to prioritize their representative role over their regulatory role and so far, no concrete steps to separate the two roles have been taken at an institutional or at the legislative level. 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.

One of the most prominent reasons for women giving up their space in litigation and bar elections has been the uncouth behaviour and demeanour of some of the male colleagues and the general dismissive and belittling attitude towards women,³⁰ despite this, 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 taken.

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 of the candidates for election in these offices. 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.³¹ 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. Therefore, the fact that the main regulatory

²⁸ See supra note 26.

²⁹ See supra note 7, Pg. 40.

³⁰ Ibid, Pg. 38.

³¹ See Legal Practitioners and Bar Councils Rules 1976. Available at: https://www.lawyher.pk/Uploads/Legal%20Practitioners%20and%20Bar%20Council%20Rules%201976_71b8.pdf

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.

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. 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 2007.³²

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.³³

Although, bar councils are composed of individuals who run for elections, the prescribed eligibility for candidacy in law that is not always mindful of barriers for fair representation and the ground realities of hostile environment, disparity in numbers between male and female lawyers are some of the factors that are not taken into consideration but which lead to creation of an unequal playing field for male and female election candidates. The growing influence of national politics on bar politics is also a serious concern especially with regards to independence of the bar.

For Pakistan Bar Council, the access and eligibility is even more limited as there is an electoral college that votes the members out of the pool of advocates supreme court. A whole chain of discrimination from obtaining of the license of lower courts to becoming advocate supreme court, discouragement from active legal practice by law firms and seniors and difficulty in obtaining requisite number of judgements as counsel with attendance marked etc are all factors that systemically hold women and other marginalized groups back as a result of which the justice sectors suffers from a diversity and inclusion problem.

C. Prosecution Service

The prosecution service is an integral service within the justice sector. This is the department through which criminal proceedings are initiated in courts and trials are conducted against crimes, including crimes against women, children and other marginalized groups. Since my study in 2021 focused on sectors in the Pakistani province of Punjab, we will limit our analysis for the purposes of this paper to the extent of the Punjab Prosecution Service and likewise focus on the data of reported crimes from the same province as well. This data has been compiled by the Punjab Commission on Status of Women and is published annually in its Punjab Gender Parity Reports. The latest figures are from their report form the year 2021 which was accessible at the time of writing this paper. According to this report, 9734 cases of violence against women (VAW) were

³² See supra note 7, Pg. 37.

³³ Ibid.

reported in 2021 in Punjab. Only 5 percent of the cases that were decided during this period resulted in convictions and 95 percent resulted in acquittals.³⁴

Prosecutors are a key player in a victim's access to justice. As advocates, they analyze evidence, prepare for trial and present the case in a court of law. The prosecution service aims to charge the accused based on the evidence and the prosecutor is an officer of the government. There are 4 categories of prosecutors, depending on the seniority of the prosecutor. These categories from the lowest grade to the highest grade are: Assistant District Public Prosecutors, Deputy District Public Prosecutors, District Public Prosecutors and Additional Prosecutor Generals. These prosecutors are headed by the Prosecutor General of the province. Female prosecutors are encouraged in the Punjab Criminal Prosecution Service (PCPS). In VAW cases especially, female prosecutors offer a more comfortable outlook for female victims and children. However, female prosecutors still make a small proportion of the total PCPS. Figure 7.24 of the report shows a male-to-female comparison in the five categories of the prosecution service.³⁵

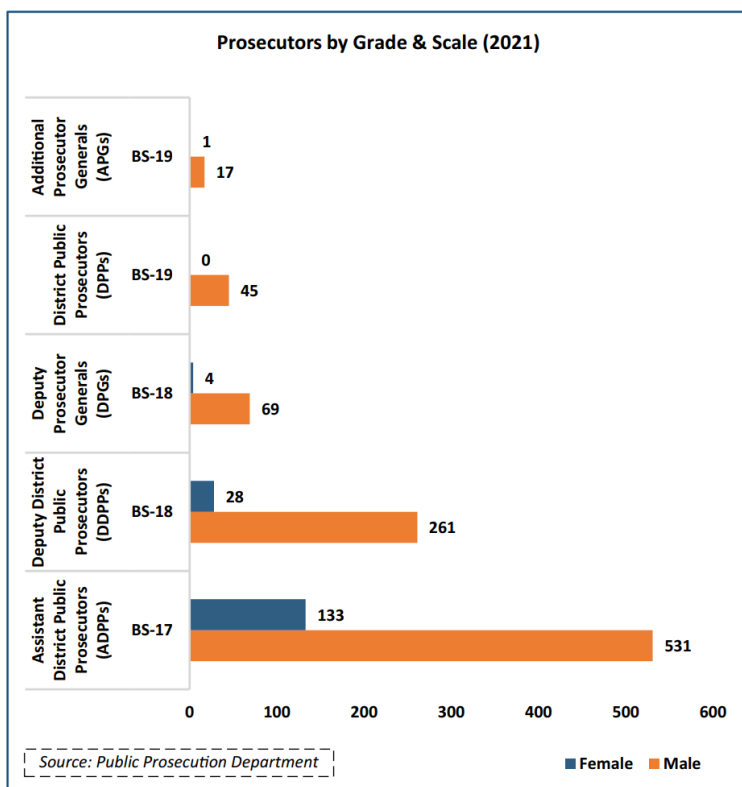


Figure 7.24 Punjab Gender Parity Report 2021

(15 percent) were women; 923 (85 percent) were men.

With increasing 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 one 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.³⁶

The highest number of female prosecutors was amongst the Assistant District Prosecutors, resulting in a percentage of 25% female prosecutors, compared to 75% male prosecutors- a GPI of 0.25. Within the highest rank i.e., the Additional Prosecutor General, there is only 1 female prosecutor, compared to 17 male prosecutors. Only 15% women make up prosecutors in Punjab as per the Punjab Gender Parity Report of 2021. Data from the Punjab Prosecution Service shows a similar imbalance as amongst the lowest rank i.e. ADPPs, there are 75% male and 25% female prosecutors of all Additional Prosecutor Generals (highest rank after Prosecutor General) 94% are men. Of the 1089 prosecutors working with the Public Prosecution Department only 166

³⁴ Punjab Gender Parity Report 2021, Pg. 207. Available at: https://pcsw.punjab.gov.pk/system/files/PGPR-2021_6.pdf

³⁵ Ibid. Pg. 227.

³⁶ See supra note 7, Pg 2, 45 and 64.

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. It is a field that not associated with women and is considered ‘hard’ as opposed to softer fields like ‘family law, child and custody matters or IP rights’ that are considered more suited for women.³⁷

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.’³⁸

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 criminal law firms that we reviewed, one established and led by a female advocate based in Rawalpindi/Islamabad and the other by a senior male lawyer 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. In comparison, in the male-led law firm, only 1 of 4 associates is a woman.³⁹

During the research I found the stereotypical notion about criminal law as not being ‘suitable’ for females, being challenged. In the various women led firms that we studied, the data established that when women were in leadership positions, more female associates joined the firms regardless of the area of practice and may even outnumber male counterparts in some cases. 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 even in areas traditionally held to be ‘suited to men’. What is missing however, is the accountability and the rules and procedures for recruitments and appointments from a gender and inclusion lens in these sectors.

The challenge is compounded by lack of awareness and disconnect between these sectors and the graduates and/or early career professionals as no proper information or guidance service is available. More than 75% of the people said that they had no awareness about joining the prosecution service and its application procedures. 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 while 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 could be more inclusive in its approach to recruitment by conducting more awareness and training sessions in law schools

³⁷ Ibid. Pg. 45.

³⁸ Ibid.

³⁹ Ibid. Pg. 46.

for female students and educating them about the role of prosecutors as well as the application process.

73% of the female lawyers believed 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.⁴⁰

Prosecutors in Punjab are presently recruited in accordance with Section 8 of Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act of 2006.

Section 8 states that,

1. The Government may appoint Additional Prosecutors General and Deputy Prosecutors General to conduct criminal cases in the Supreme Court, the High Court, the Federal Shariat Court or any other Special Court.
2. The Government shall appoint a District Public Prosecutor [DPP] in each district who shall be the officer in-charge of the prosecution in the district within the meanings of the Code.
3. Appointments to the Service, except appointment of the Prosecutor General under section 6, shall be either by initial recruitment or by promotion or by transfer as prescribed.
4. All appointments by initial recruitment shall be made on the recommendation of Punjab Public Service Commission.

This shows that prosecutors, other than Prosecutor General⁴¹ are either a. appointed via a competitive examination followed by interview or b. are promoted from the existing pool of prosecutors in service. The initial hiring, therefore, remains based on competitive exam, followed by an interview in which Prosecutor General and Punjab Public Service Commission retain arbitrary powers remains the prominent form for initial recruitment in the service.

It is important to note that while the advertisement for post of prosecutor general contains quota for diverse religious communities and differently abled persons, there are no reserved seats or percentages for women to be recruited in prosecution service to ensure fair representation. 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.⁴² This implies that there is a need for reform in the outreach and recruitments for prosecution service with a gender and inclusion lens.

D. Law Firms

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

⁴⁰ Ibid. 62.

⁴¹ Prosecutor general is appointed in accordance with Section 6 of the 2006 Act as opposed to Section 8 and is a political appointment appointed by the provincial government.

⁴² See supra note 7. Pg. 34.

remain their internal matters and barring a few financial or taxation regulatory requirements, there remains 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 to the fair representation study,

‘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.’⁴³

There is no code of conduct that firms have to follow, adopt or abide by and their affairs largely remain a private and internal matter for them to decide even though advocates as individuals are bound by ‘Canons of Professionals Ethics’ covered in Chapter XII of Legal Practitioners and Bar Councils Rules 1976 and which includes provisions on conduct related to clients. No rules for firms under Section 56 (m) of 1973 Act have been promulgated as yet. 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 discussed above (see page 11 above).

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 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.’⁴⁴

⁴³ Ibid. Pg. 48.

⁴⁴ Ibid. Pg. 49.

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, 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.⁴⁵ 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.

91% of the online 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 three firms out of the twenty we sampled for this study had mentioned any clear track and progression timelines on their website.⁴⁶

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.⁴⁷

88% of the online 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.⁴⁸

53% of the students considered entry and advancement in a law firm to be 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%.⁴⁹

50% of the members of the legal community including male respondents believed that entry and advancement in a law firm are more challenging for females while 67% of female lawyers agreed that entry and advancement in a law firm were more challenging for a woman. 80% of them 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

⁴⁵ Ibid.

⁴⁶ Ibid. Pg. 51

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

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.⁵⁰

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.⁵¹

For members of the legal community including male respondents, 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%.⁵²

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. 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.⁵³

80% of the female law students highlighted that there was a different recruitment process in each law firm. 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.⁵⁴

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.⁵⁵

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.⁵⁶

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, nondiscrimination, clear entry and progression track in the firm and a conducive working environment in general. Currently, this is mostly discretionary and lacks transparency.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

The reason why law firms have such a central role in the entry and advancement of lawyers is that 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 fifteen cases of the applicant in which he/she has appeared as counsel is required to be filed along with other documents.

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 (see page 4 and 8 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’.

Female lawyers have described this as ‘narrowing the pool of eligibility’ and demand 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.⁵⁷ 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.

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. However, 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.⁵⁸ These findings necessitate that some regulations to address these challenges in law firms be developed under a gender and inclusion lens for promoting fair representation in justice sector.

⁵⁷ See supra note 7, Pg. 22.

⁵⁸ Ibid. Pg 53.

Composition of Bodies Responsible for Recruitments and 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

Source: Fair Representation in Justice Sector Study.⁵⁹

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, for instance, the member who is supposed to be a representative of the bar could well be a woman. 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

⁵⁹ See supra note 7.

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.

4. How ‘Seniority’ can be Rigged and How Other Technicalities Gatekeep Advancement

In Pakistan there is a lot of demand among several, though not all, members of the bar and some from judiciary and the ministries, for adopting ‘seniority principle’ for the appointments of judges in higher courts, especially the supreme court.⁶⁰ In that, the proponents of the principle demand that appointments for position of judges be based on the principle of seniority as per which the senior most person automatically gets a right to be appointed. Such a principle does exist in the case of appointment of chief justices of high courts or of supreme court but for appointment of judges other than the chief justices, the same principle does not apply, instead the Chief has the arbitrary power to initiate nomination for appointments of other judges. This is a power that is often criticized and calls for its reforms are only increasing in light of the deteriorating political and constitutional crisis in the country whereby allegations of cherry-picking likeminded judges for political outcomes in political cases are ripe. The judiciary is unable to withstand such criticism and if the reform does not ensue, the apex court is likely to crumble under the mounting pressure and at risk of losing its legitimacy as an institution for enforcement of rights.

‘Seniority’ also features as an important trigger for eligibility for other roles in the justice sector. For instance, to become eligible for license to practice law at high courts and then at supreme court, certain number of years of ‘active legal practice’ must be evidenced to be eligible. These number of years get counted based on date of obtaining prior licenses and so each day with or without a license can be very important for advancement and eligibility for a career in justice sector. Likewise, to be eligible to run as a candidate for the election of Pakistan Bar Council, the candidate must hold the license to practice as an advocate supreme court. The longer the delay for women to reach advocate supreme court position, the fewer the pool of women eligible for Pakistan Bar Council as well, both as voters and as candidates.⁶¹

Unfortunately, the system of obtaining license to practice as advocates in various tiers is extra cumbersome and onerous in Pakistan. It is marred with lack of transparency and arbitrary powers and has layers of needless bureaucratic technicalities that have implications on advancement & representation in justice sector not just at personal level, but at an institutional level for instance in composition of Pakistan Bar Council etc. In other jurisdictions, including the UK, Singapore and South Africa, entry stage has higher regulations and once past those, a lawyer usually has rights of audience in all tiers of courts including apex courts.⁶²

In Pakistan, there is undue gatekeeping and burden on judges and committees responsible for interviews at every stage of progression and such systems have implications for those with more practice at trial courts, lower courts and those who may be held back due to other systemic, social and institutional factors, such as not having equal opportunities to have their name on ‘countable’ judgements/orders as counsels, inefficient degree verification processes and court staff comprising mainly of a single gender. Most females are discouraged from active legal practice even when they join law firms and as a result have had their licenses delayed. License process depends on how soon degree is verified and when the interview turn comes – that is discretionary. We now turn to look at these and other such challenges for obtaining licenses in detail.

⁶⁰ Staff Reporter, ‘Pakistan Bar Council to continue campaign for adherence to seniority principle’, Dawn, 6 August 2021. Available at: <https://www.dawn.com/news/1639052>

⁶¹ See supra note 7. Pg. 40.

⁶² See Supra Note 5.

Tier Wise Requirements of Obtaining License to Practice Law in Pakistan

a. Lower Courts

For obtaining license to practice in lower courts of the province, the candidate is required to possess a degree from an institution degree from an Institution that is recognized by Pakistan Bar Council and has a NOC from Pakistan Bar Council. (NB: Private students whether local or foreign are not eligible to apply for license). The candidates are also expected to take bar exams scheduled arbitrarily and sporadically. One of them is the special equivalence exam or “SEE Law” for the foreign LL.B degree holders which they must sit prior to them taking the Law Gat exam which all graduates must take if they wish to enroll with the bar for their license whether local or foreign LL.B holder. Once they clear the exams, they are required to complete a six-month intimation period in which they are to shadow a senior lawyer.⁶³

The candidates require character certificates from two advocates. They must also furnish an undertaking to join a Bar association within six months of enrollment and an Affidavit of no criminal or professional misconduct proceedings. They must also submit six passport size photographs in professional dress with white background, enrollment and degree verification fee (which differ for local and foreign graduates) and finally and most importantly, they need to furnish a list of *twenty* cases on which they have assisted the senior counsel during their 6 month intimation period.⁶⁴

It is this list of twenty cases which female candidates find harder to furnish. This is because law firms and senior counsels give fewer opportunities and exposure to their female employees/associates to assist in court. In most cases, female associates, if hired at all, are made to prepare case briefs or do legal research in the firm while their male counterparts get to accompany the senior male advocates for actual hearings and active practice in courts, depriving them of the practical experience and opportunity to have their attendance recorded and of learning the procedures. Currently, no safeguards to ensure that firms or senior counsels set up gender balanced teams to assist them in courts exist.⁶⁵

b. High Courts

To apply for the license to practice law in the provincial high court(s) a period of two year must have lapsed from the date a candidate acquires the license to practice in lower courts save where they successfully claim exemption from the two-year period. The exemption interview however is discretionary and often is scheduled when the two-year period is either already expired or very near to its expiry so that in practice, the exemption bears little or no significance for the advocate in question. The grounds for the exemption included the possession of an LL.M degree or a bar at law.⁶⁶

The candidates often feel the redundancy and futility of exemption for holders of Bar at Law from two-year lower court practice due to arbitrary schedule of interviews or other delays on part of processing of the application by the Bar. They have identified lack of transparency and absolute discretion of judges/interview/enrolment committee (usually consisting of two to three judges) in conducting and calling for interviews, As a result, despite payment of exemption fee to avail the opportunity provided by the rules, the interviews are usually not scheduled efficaciously for them

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

to make any practical sense for the applicant as the period being requested for waiver (two years practice in lower courts) is likely over or almost over in any event by the time the interview is called.

“My two-year exemption period had already lapsed when the time for my interview for exemption came. The exemption was developed to facilitate and if you have obtained the requisite qualifications, you should be eligible to become advocate high courts and assist. However, because of all of these unwritten policies and discretions, the facility has largely become redundant” lamented Barrister Ali Zain Raza Naqvi.⁶⁷

In general, for the high court license, the candidate is to furnish, three photographs in professional dress, a fitness certificates from two advocate high courts on their letterheads filed copy of renewal license of current year. They must also furnish another affidavit of no criminal or professional misconduct proceedings, as well as an affidavit of duration of practice. Pay the applicable fees and charges and furnish a list of *twenty cases conducted by the applicant in lower courts*. The candidate must show that they conducted these cases as a counsel and not merely assisted the senior advocate. The threshold, therefore, is even higher and the likelihood of women meeting these requirements, in light of active discrimination against them from arguing cases in courts, is therefore, also much lesser as compared to their male counterparts.

c. Supreme Court

For the license to appear before the Supreme Court, the requirements are even more stringent. The candidate must submit, two passport size photographs attested by the President/Secretary of the Bar Association or Member of a Bar Council; a fresh dated Certificate, in original, from the High Court as to applicant being a fit and proper person for being enrolled and to appear and plead as an Advocate of the Supreme Court together with its photocopy. (In case there is gap between dates of issuance of the fitness Certificate and submission of enrolment application to the Pakistan Bar Council applicant has to explain reasons thereof separately through an Affidavit. If the explanation is not found satisfaction by Enrolment Committee, it may impose penalty ranging from Rs.5000/- to 20,000/-. In case delay exceeds one year the fitness Certificate needs to be revalidated by the High Court.).⁶⁸

The candidate must also furnish an Affidavit of the applicant on stamp paper of Rs. 50/- (duly attested by Notary Public/Oath Commissioner) stating that contents of his application are true and correct and that he is eligible and not disqualified, in any manner, for enrolment and to practice as an Advocate of the Supreme Court and that neither he was ever found guilty of professional or other misconduct nor any such case is pending against him before any Bar Council; a certificate from the Provincial/Islamabad Bar Council to the effect that;

- the applicant is an enrolled Advocate of the High Court having *not less than seven years* standing as such and that his name is still borne on the Roll of Advocates of the High Court maintained by the Provincial Bar Council concerned or the Islamabad Bar Council;
- the applicant is not in arrears of dues of the concerned Provincial Bar Council or the Islamabad Bar Council; and
- neither proceedings for professional or other misconduct are pending against the applicant nor he has ever been found guilty of professional or other misconduct.⁶⁹

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid.

In addition to that, the candidate must also submit a certificate regarding clearance of dues from the Bar Association of which the candidate is a Member. The candidate must deposit slip of enrolment fee of Rs.50,000/- to be deposited in Collection Account of the Pakistan Bar Council with designated branch of the Habib Bank Limited on the prescribed deposit slips obtainable from the Habib Bank, Offices of the Pakistan Bar Council and Provincial/Islamabad Bar Councils or through Pay Order/Demand Draft of the like amount in the name of the Pakistan Bar Council drawn on Habib Bank Limited, Supreme Court Branch, Islamabad.⁷⁰

Furthermore, a complete bio-data of the applicant which should also indicate his special educational qualifications, experience, Legal Advisorships/offices and elected office held, if any, and the fact of his being an income tax assesses or otherwise mentioning also the latest and complete postal address, Tel/Cell, fax numbers and e-mail address has to be provided. In case the applicant had been in service, a Certificate from the competent authority indicating also the duration of service with exact dates of joining and leaving and reasons of leaving the service.⁷¹

An undertaking that the applicant will become Member of the Supreme Court Bar Association of Pakistan within six months of his enrolment as an Advocate of the Supreme Court and a certified copy of Computerized National Identity Card (CNIC) also has to be provided.⁷²

As with lower courts and high courts, the candidate for supreme court license must also submit a list of selected, pending and disposed of, cases independently conducted by the applicant in the High Court, duly signed by *him*, together with copies of detailed and final Judgments (reported or unreported) at least of *his 15 cases* so conducted. In case an applicant has at least five (05) *reported cases to his credit*, in matters he has independently conducted in the High Court, *he* will be accorded preference, as per decision dated 20-05-2020 of Enrolment Committee of the PBC, in fixation of his application for interview before the Committee. *He* may, therefore, furnish a complete list of *his* reported cases, if any, mentioning their citations together with copies of Judgments.⁷³

The language used in these forms indicating these requirements is very interesting. Although, as per rules of interpretation, the word ‘he’ includes ‘she’ but the fact that language is used in masculine terms even in the year 2023 and has not been made gender neutral shows that in the imagination of the people designing these forms, by resorting to pronouns, he/him/his, the norm is the ‘man’.

The challenge for women to furnish this list of judgements becomes very cumbersome because their opportunities to argue cases are limited or marred with active discouragement or discrimination. However, male advocates often also face the challenge of showing the requisite number of judgements given that cases can take years before they get decided and judgements passed in Pakistan that are capable of being counted towards these fifteen cases. Likewise, those who work in lower courts mainly may be well versed with procedure and trial but may still not meet the eligibility requirements to apply for license to practice in supreme court due to lack of judgements in the high court.

Advocate Hafsa Ahmed believes that,

“Firm practice can set you up for a delayed entry into advocacy of supreme court as you are secondary to a main counsel and not likely aware that despite that, you can still give your name as

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

counsel for it to be recorded and appear in the orders and judgements related to the cases you work on or assist with.”⁷⁴

Advocates have also pointed out that knowing what counts as an ‘order’ or ‘judgement’ for enrolment purposes is also important. Essentially, bail petitions or mere applications etc do not count towards judgement or order for requirements of enrolment, however, appeals, writ petitions, cases that are decided on merit can count towards ‘orders’ or ‘judgements’ that enable an applicant to meet the requirements for enrolment for higher licenses.

Ensuring that your name appears in the plaint itself is important for it to be recorded and appear on the orders/judgements later. Advocates High Court must ensure that they get a Computerised CC Number and PLH Number (fill a form, give copy of CNIC, High Court License Number, two pictures and fee) allotted to them so that their name can appear in the orders/judgements. As one participant in a twitter discussion on this topic stated, “Be sure to mention your case number and correctly spelled name on coloured paper chits available inside the courts and hand them to the reader – this is a key part in getting your name in the order/judgement.”

Additionally, there is also the challenge that interview dates are discretionary. There is no clarity, policy or certainty as to when the interviews for licenses would be scheduled. It depends on the availability of and burden on judges at any given point. Despite meeting requisite time of prior practice, the interviews for progression may be significantly delayed causing loss of standing by up to several years. Thus, even after completing time and judgements, the schedule of interviews is ad hoc and arbitrary.

Delays may also be caused during the degree verification process as there is lack of clear policy and responsibility in degree verification process that can lead to applicants significantly losing out on their time and standing, in some cases by up to four years or more. Applications for degree verifications have been mishandled causing significant processing delays. At times, insistence on verification from HEC is recommended to foreign graduates even though HEC is not their degree verification body. At other times, incorrect Inns have been emailed for verification of those with Bar at Laws leading to delay in their applications and in extreme cases, the emails to verify degrees to foreign universities had not been sent when asked to recheck. As highlighted by Barrister Mehrunissa Sajjad,

“I lost four years of my standing because of lack of clear policy and mishandling of my application on part of bar administration. Even though my application clearly stated that my Inn was Middle Temple, they had emailed Inner Temple instead.”⁷⁵

Another issue highlighted by lawyers is the bias and change in attitude towards foreign degree holders and more so towards female foreign degree holders. To begin with, court staff comprises of mostly males. There are hardly any female court staff which makes it more difficult for them to approach the male readers and develop a rapport with them and be known to them as counsels in a given case.

Advocate Atira Ikram shared that she had a horrendous experience, not only because,

“public dealing is primarily dominated by men but also because of how there is a marked shift in the attitude if there is a foreign and particularly, where a foreign female graduate is in question. Nine to ten months of my time were wasted as a result with no privacy or protection of sensitive data such

⁷⁴ Ibid.

⁷⁵ Ibid.

as contact numbers. Many women could easily end up feeling that it isn't worth it and may start exploring other career options in law that do not require a license. It is the profession's loss.⁷⁶

In other countries, the focus is on entry requirements but once an advocate is enrolled, they generally have right to appear before any courts regardless of tier. For instance, in UK, Barristers with full practicing certificate have rights of audience to practice in all courts. For full practicing license:

- a. the individual must have been called to the Bar of England and Wales by an Inn of Court;
- b. the individual must have completed a further period of pupillage satisfactory to the Bar Standards Board (usually a period of 12 months); and
- c. pay such fee or fees as may be prescribed.

The difference with the system in Pakistan is that once an individual has completed the education aspect (the Bar) and the training period (the pupillage), they can obtain a full practicing certificate and appear in all courts in relation to all proceedings. There is no restriction based on the hierarchy of the Court once you have obtained a full practicing certificate.

In Singapore, after graduating with a law degree from recognized university an individual must both:

- (i) Attend the preparatory course leading to Part B of the Singapore Bar Examinations, and pass Part B of the Singapore Bar Examinations
- (ii) Serve the applicable practice training period (PTP).

The PTP refers to a period of supervised training in relation to the practice of Singapore law, which can be achieved:

- under a practice training contract with a Singapore law practice (generally six months);
- through working as a Legal Service Officer (36 months); or
- under the supervision of a qualifying relevant legal officer. In addition to the requirements set out above the person must:
 - (i) Have attained the age of 21 years.
 - (ii) Be of good character.
 - (iii) Have made the required written declarations under section 25 of the Legal Profession Act which are that they have:
 - a. taken out the necessary professional indemnity insurance;
 - b. paid all subscriptions and levies, and all contributions which are due to the Law Society of Singapore; and
 - c. obtained the necessary continuing professional development (CPD) points under the Legal Profession (Continuing Development) Rules 2012.

In particular, the requisite CPD activities under rule 9 and the First Schedule of the Legal Profession (Continuing Development) Rules 2012 must be completed. The legal profession in Singapore is a fused profession.

Each lawyer who is admitted to the Singapore Bar is an Advocate and Solicitor of the Supreme Court of Singapore and has the right of audience in any court of justice in Singapore. A lawyer in Singapore can act as both:

- An advocate (undertaking litigation work in the courts).

⁷⁶ Ibid.

- A solicitor (undertaking advisory, corporate and conveyancing work). Even in Singapore, once an advocate has finished the educational and practical training components and has demonstrated that they have the personal attributes required, they can practice as an advocate in any court in Singapore.

In South Africa, an attorney who wishes to appear in the High Court, the Supreme Court of Appeal or the Constitutional Court must apply to the registrar of the division of the High Court in which he or she is admitted and enroll as an attorney for a prescribed certificate. The registrar must issue the certificate if satisfied that the attorney:

- (i) Has been practicing as an attorney for a continuous period of not less than three years;
- (ii) Has gained an LLB degree; and
- (iii) Has not had his or her name struck off the Roll of legal practitioners or has not been suspended from practice (or there are no proceedings pending to strike the applicant's name from the Roll or to suspend him/her).

The difference with the system in Pakistan is that although there is a minimum practicing period of only three years before an advocate can appear in the High Court, the Supreme Court and Constitutional Court there are no rigid requirements about the number of reported judgments one must have to their name. In other countries, it is observed that majority of the requirements are applied at entry stage whereas in Pakistan, lawyers with several years into practice are still made to substantiate their practice for progression and provide lists of final judgements. The requirements continue to be progressively applied even after years of practice.

The Implications of the Tier-Wise and Technical Process of Obtaining License on Advancement and Representation in the Justice Sector

An extra cumbersome, arbitrary, hierarchical and non-transparent system of obtaining licenses to practice as advocates in Pakistan has implications on seniority and standing as advocates whose interviews or applications are delayed may be significantly lose out on the number of years of their standing. It also has implications on less representation of women, minorities and historically less represented groups because of gatekeeping tactics because due to systemic and invisible barriers, it is harder for them to fulfil the requirements of becoming advocates of the supreme court.

The stringent and technical requirements for license in higher courts has implications on diversity in other sectors and bodies of justice sector. For instance, advocates supreme court elect and/or can stand as candidates for Pakistan Bar Council, Judicial Commission of Pakistan or be members of Supreme Court Bar Association so it is not just about the individual growth and progress of applicants but also about the opportunity to make these apex forums more diverse and inclusive, which is lost when such technicalities are introduced disproportionately.

Such technicalities may result in able candidates, both male and female, dropping out of the process due to its hostile, misguided, and arbitrary processes as a result of which the profession, the justice sector and the country stand to lose. Those with greater practice in lower courts or trial courts also suffer from implications of inability to complete their list of requisite high court cases which in turn delays their license for Supreme Court and may push them down the line of seniority for any chances of being considered for appointment as a judge in case and if seniority is entrenched.

Where there is discretion, there is discrimination whether it is on basis of political affiliation, chambers, gender, class, degree or other factors. This is alleged to be so in the scheduling of

interviews as those whose interest align may find that their interviews are scheduled more efficiently than others.

At Supreme Court level ‘final and detailed’ judgements are expected to be submitted with a preference based purely on chance and luck that should an applicant have five or more ‘reported’ cases independently conducted at high court then ‘he’ will be accorded preference, as per decision dated 20-05-2020 of Enrolment Committee of the PBC, in fixation of his application for interview before the Committee.

How Can this be Reformed?

The individual progression has implications for representation in these other forums therefore, it is very important to address these gaps and challenges and make the process of licenses more accessible, clear and streamlined. Decisions should not be made behind closed doors and there must be certainty in the process. Transparency is therefore a key factor for reform. There should be less focus on technicalities like judgements but until then there should be more awareness and training on how to get your name to appear in the order sheets and judgements.

It is suggested that like other countries, regulating entry in the profession better but making progression and advancement easier can democratize the profession and enhance representation in upper echelons of the profession.

More use of digital technology should be made to streamline and expedite the process, especially in terms of tracking applications and providing information on status of application etc and policy to refund 50% exemption fee if exemption interview is delayed by one year and 75% of the exemption fee, if interview is delayed by over twelve months.

It is also recommended that there should be more female court staff. There also needs to be a change in the culture of the legal industry and more encouragement for younger lawyers to take on cases through support, referrals etc.

More importantly, the goals for any reforms must be to make the system more accessible and equal in terms of access to opportunities for all stakeholders. There needs to be a paradigm shift from gatekeeping to inclusion and equitable access and advancement as far as reforms in justice sector are concerned.

5. Role Patriarchy Plays in Maintaining and Sustaining Power Dynamics of Dominant Class and Gender

The word “patriarchy” refers to the rule of the father, or the patriarch. It was originally used to describe households that were dominated by a male figurehead and where decision-making about everyday facets of life, such as education and marriage, were made by the men in positions of authority over the women. The control of men over decision-making and their access to resources did not remain within the private sphere alone, however; rather, the control in the private sphere led to their advancement and control of resources and positions in the public sphere as well. Access to better nutrition at home, to better schooling and education as well as more freedom of mobility in the society enabled men to work in various fields outside the home and capture senior leadership positions in diverse sectors, including the justice and policy sectors. This included the political arena as well as the executive, legislative and judicial organs of the State. Consequently,

the social, legal, economic and political structures that emerged were “male-centred”, “male-identified”, “male-dominated” and other valorised qualities narrowly defined as masculine.⁷⁷

As a system, patriarchy configures social relations and equations between men and women in a society in terms of power dynamics, wherein men yield power and control and women are expected to be subservient and submissive. These dynamics are reinforced through culture, norms, religion, education and even laws to maintain the status quo. Thus, any challenge to or disruption of these configurations in society receive vehement backlash and are hotly contested. They are often shrouded in religious, cultural and other sensitivities of the social fabric, as well as notions of honour, all of which were created by the same patriarchy that has an interest in sustaining itself. As authors Alison Jagger and Paula Rothenberg argued, patriarchy is not just a set of social relations between men and women, but in a self-serving way, it also creates solidarity among men that enables them to dominate women and perpetuate the inequalities in the system that works for them. In other words, the patriarchal system is characterized by power, dominance, hierarchy and the collective desire of men to maintain the status quo of gendered and unequal power relations to continue benefiting from this system.⁷⁸

The opposite of patriarchy, as Kamla Bhasin popularly explained in her interview with Bollywood actor Amir Khan on his show, “Satyamev Jayate”, is not matriarchy but equality. According to UNICEF, gender equality entails that men and women, boys and girls have equal access to the conditions, treatment and opportunities for realizing their full potential, human rights and dignity and for contributing to (and benefiting from) economic, social, cultural and political development. This means that men and women, girls and boys enjoy the same rights, resources, opportunities and protections. This includes the right to equal participation in the political arena and other decision-making and leadership positions. But as the United Nations Population Fund points out:

“Where gender inequality exists, it is generally women who are excluded or disadvantaged in relation to decision-making and access to economic and social resources. Therefore, a critical aspect of promoting gender equality is the empowerment of women, with a focus on identifying and redressing power imbalances and giving women more autonomy to manage their own lives. Achieving gender equality requires women’s empowerment to ensure that decision-making at private and public levels and access to resources are no longer weighted in men’s favour, so that both women and men can fully participate as equal partners in productive and reproductive life.”

The notion of gender equality appears to mount a direct counternarrative to the patriarchal values and norms that place men in a position of authority over women. Thus, it receives such a lackluster response for its realization in practice, particularly from men sitting in those positions of authority and power who enjoy their status. Understanding this notion helps to understand why patriarchy hits back at the concept of gender equality and resists it so zealously at times by using religion, honour or culture as the shield.⁷⁹

In the legal profession and justice, our experience has not been much different. The year 2023 marked 100 years since women had been expressly granted the right to practice law. Yet as barrister Aneesa Agha argues, this was a hard-fought victory in the battle of its time but the war is not over.

“A hundred years ago, the Legal Practitioners (Women) Act, 1923, was passed in British India, with a preamble that read: ‘An Act for the removal of doubts regarding the right of women to be enrolled

⁷⁷ Nida Usman Chaudhary, ‘Patriarchy in Politics and Political Parties in Pakistan’, FES 2023. Pg. 13. Available at: <https://library.fes.de/pdf-files/bueros/pakistan/20116-20230418.pdf>

⁷⁸ Ibid.

⁷⁹ Ibid.

and to practise as legal practitioners.’ ... A hundred years later, the promise of true equality in the profession remains unfulfilled. Women make up less than five per cent of the higher judiciary and bar representative bodies in Pakistan. Only 4 per cent of Supreme Court advocates are women. Women lawyers have been demanding greater representation at the bar and bench, yet the usual response ranges from the inane (‘Asma Jehangir did it, why can’t you?’) to the trivialising (‘But what about men’s rights? Men get harassed in courts too’) to the downright insulting (‘appointments are merit-based, not token seats’). Such reactions are designed to erase women’s fight for equality by not ‘seeing’ the inequality in the profession”.⁸⁰

Male advocates often overlook or don’t acknowledge female counterparts because they don’t see worth in investing in networking with women. Many genuinely don’t know how to interact with women in our patriarchal society.

Unwritten allegiance to “professional tribalism” and “brotherhood” helps to perpetuate power dynamics – corridors of leadership gatekept by de facto groups.

Respondents to the fair representation study have reported experiencing other patriarchal & sexist attitudes especially female candidates standing for bar elections have reported that they have often been told by those from whom they seek votes (usually male colleagues) that “it is better not to cast vote at all than to cast it for a woman”.⁸¹

Patriarchy also plays its part in determining the fields in which women take up practice. 80% respondents said they were discouraged from pursuing criminal law the most.⁸² Women encouraged to take up fields considered softer and more suitable for them based on stereotypical gender roles associated with them, such as family law etc. The gendered positioning and division of areas of legal practice into feminine and masculine are all social constructs.

In addition to that for women finding clients and work more challenging because of gender stereotypes prevalent in society that look at law as a male centric and male suited profession. This appears to connect with broader issue of agency and empowerment of women in society in general. Longer probation periods for women have been reported and women have reported that they must overcompensate the work to be taken seriously.

The profession demands and rewards long hours clocked in office but offers no supportive structures or policies such as parental leave, day care etc that can enable working mothers to sustain their jobs. Many firms are skeptical of hiring females due to perception and gender biases. Sexist questions still asked. While men are usually compensated for starting family whereas women are expected to care for child, but no one is willing to support her by offering enabling policies or share responsibilities.

A question on women’s agency post marriage has implications for her career opportunities and growth however, dropout isn’t because of lack of agency – profession suffers from retention problem. Perception of profession and court environment as well as incidences of violence and long hours make it difficult for women to be “allowed” to pursue this field and when they do, their role, performance, input, success and contribution is often gauged under a male lens.

The lack of maternity leave and childcare support is not considered inequality, despite its unequal effects on the career progression of male and female lawyers. The absence of sexual harassment policies at law firms, in courtrooms, in bar rooms, or other legal workplaces is not seen as discriminatory practice, although its consequences on the lived experiences of men and women are

⁸⁰ Aneesa Agha, ‘A forgotten battle’, Dawn, 26 May 2023. Available at: <https://www.dawn.com/news/1755894>

⁸¹ See supra note 7, Pg. 44.

⁸² See supra note 36.

unequal. The failure to appoint a woman to the Supreme Court for 75 years is not seen as a deprivation of the rights of half the population, yet provincial representation on the Supreme Court is taken to be a self-evident and inviolable truth. We do not need signs blaring ‘No women allowed’ if we can achieve the same result by sidestepping these inconvenient realities.⁸³

It is interesting to observe how much the male 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.⁸⁴ 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.

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.⁸⁵

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,

⁸³ See supra note 80.

⁸⁴ Punjab Gender Parity Report 2019-20, (Punjab Commission on Status of Women, 2021) 231.

⁸⁵ See supra note 7. Pg. 57.

“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.”⁸⁶

What is even more interesting is that we found that the female turnover perception is also a bit overhyped 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.”⁸⁷

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.⁸⁸ 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

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Ibid. Pg 58.

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 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.

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.⁸⁹ As one of the respondents said: 'The profession suffers from lack of professionalism'.⁹⁰

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.⁹¹ 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.⁹² The combined result of, unpaid labour 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.

⁸⁹ Ibid. Pg. 59.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Ibid. Pg. 60.

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.⁹³ 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 in accordance with gender sensitivity guidelines.⁹⁴

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 respondents said that they never contemplated quitting at any point, despite 95% of them confirming that they faced or feared some form of harassment unprofessional behavior in the courts whether in shape of staring, cat calling, stalking or actual violence, physical force or verbal assault.⁹⁵ 74% of female students intend to pursue litigation while 79% of female law students said they would consider a career in the judiciary.⁹⁶

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.⁹⁷ 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.⁹⁸ 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

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Ibid. Pg. 53.

⁹⁸ Ibid.

for advancing women's chances of being recruited and/or appointed into the law firms and from there, as judges or as prosecutors, etc.

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 actual 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'.

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.⁹⁹ 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.

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.¹⁰⁰ 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.¹⁰¹ 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.

Moreover, in a situation where both a male and a female quits a law firm, the male'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.

The underrepresentation of women in the legal field is not unique to Pakistan but our insistence on ignoring it as a problem definitely is. While other jurisdictions have invested in researching, debating, and implementing gender-inclusive reforms in the legal profession, our bar councils and judiciary seem unperturbed by our position at the bottom of all gender parity tables. It is crucial to

⁹⁹ Ibid. Pg. 44.

¹⁰⁰ Ibid. Pg. 56.

¹⁰¹ Ibid. Pg. 65.

address these ongoing challenges, whether through legislation or judicial reinterpretation, and work towards fostering a truly inclusive legal profession and guaranteeing meaningful participation of women in law.¹⁰²

Conclusion

All sectors of justice that were 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.

Justice Sector is a Formal Employment Sector and will have to start being viewed as one. It suffers from lack of diversity & inclusion due to legal, constitutional, structural, systemic, cultural and invisible barriers rooted in patriarchy, gender roles and stereotypes. It also suffers from lack of regulation and lack of adherence to global best practices in labour and employment sectors as a result of which there are little or no HR policies, benefits, transparency, or other enabling policies for those who work in legal sector.

An introspection into the issue shows that this is not just a gender struggle but also a struggle for decent work and basic rights. We are reminded that it is crucially important to take into consideration structural and invisible barriers because legislative and constitutional reforms in and of themselves are not sufficient; a more holistic socio-economic perspective will have to be adopted for effective reforms to ensure gender diversity and inclusion in the justice sector. In addition to that, tech-based solutions can be helpful as technology has the potential to address some of the barriers that lead to unequal playing field for men and women and other marginalized persons in the profession.

¹⁰² See supra note 80.